

Ludwig Schmugge



Marriage on Trial

Late Medieval
German Couples
at the Papal
Court

TRANSLATED BY ATRIA A. LARSON

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Marriage on Trial

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Studies in Medieval and Early Modern Canon Law

VOLUME 10

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Late Medieval German Couples
at the Papal Court

Ludwig Schmugge

Translated by Atria A. Larson



The Catholic University of America Press
Washington, D.C.

Originally published in German as *Ehen vor Gericht*:

Paare der Renaissance vor dem Papst

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Library of Congress Cataloging-in-Publication Data

Schmugge, Ludwig.

[*Ehen vor Gericht*. English]

Marriage on trial : late medieval German couples at the papal court / Ludwig Schmugge ; translated by Atria A. Larson.

p. cm. — (Studies in medieval and early modern canon law ; v. 10)

Includes bibliographical references and index.

ISBN 978-0-8132-2017-8 (cloth : alk. paper) 1. Marriage (Canon law)—History—16th century. 2. Papal courts—History—16th century. 3. Marriage customs and rites—History—16th century. I. Larson, Atria A. II. Title.

HQ1051.S3613 2013

346.01'6—dc23

2012030750

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Translator's Acknowledgments

For a person who usually translates texts written by men who have been in their graves for hundreds of years, it was a genuine pleasure and enlightening experience to translate a text by a living author. Whether in his home country, Switzerland, or in his home away from home, Rome, Professor Schmutge was always just an email away, and, despite suffering an unfortunate illness and facing difficult days of rehabilitation during the time when I translated his *Ehen vor Gericht*, he was always quick to respond and eager to stay involved in the process. He also read a draft of my translation in its entirety. I am most thankful to him for his tireless efforts. I hope that my translation does justice to his fascinating book and succeeds in making the immense amount of scholarship reflected in it available to English speakers and readers.

Two other distinguished scholars of medieval canon law also deserve recognition. Stanley Chodorow read a complete draft of the translation, and his notes and emendations enabled me to produce a final text that reads in English far better than it would have otherwise. Wolfgang Müller, a native German who has now resided in the United States for many years and whose English vocabulary far surpasses my own, devoted many hours to this project. Because of his facility in both German and English and his work alongside Professor Schmutge in the records of the papal penitentiary, he was uniquely suited to answer my questions and resolve my uncertainties about the text. His linguistic and scholarly input was invaluable.

x Translator's Acknowledgments

Any errors or rough edges in the translation remain my fault alone, and I sincerely hope that none are so great that they detract in any significant way from Professor Schmutge's wonderful accomplishment that is *Ehen vor Gericht*, and, now, *Marriage on Trial*.

Atria A. Larson

Pittsburgh, Pa., February 2012

Preface to the English Translation

Research into the legal history of weddings and marriage in the Middle Ages has experienced great productivity in recent decades. While for centuries the traditional approach to the matter started from institutional history (*Institutionengeschichte*),¹ the study of the sources coming from the courts themselves has led to a shift toward a new field, in Germany called *juristische Realgeschichte*. Historians have noticed that medieval ecclesiastical courts were involved in more than a hundred thousand cases all over Christendom that dealt with couples who had trouble getting married or had undergone canonical sanctions because they lived in a marriage considered illegal by the church. Medieval legal and social historians first became aware of this treasure of sources in England through the ground-breaking study published in 1974 by Richard Helmholz (University of Chicago), reprinted in 1986.² Helmholz exploited the rich source material contained in the late medieval registers of York

1. From Raymond de Peñafort's *Summa de matrimonio* to Adhémar Esmein, *Le mariage en droit canonique*, 2nd ed., 2 vols. (Paris, 1929–35) and Jean Gaudemet, *Le mariage en occident: les mœurs et le droit* (Paris, 1987). Recently, there has been a nice but limited study by Marchetto on separation that follows the same line: Giuliano Marchetto, *Il divorzio imperfetto: I giuristi medievali e la separazione dei coniugi* (Annali dell'Ælstituto storico italo-germanico in Trento, Monografie 48; Bologna, 2008).

2. Richard H. Helmholz, *Marriage Litigation in Medieval England* (London, 1974; repr. 1986). At the same time the great Austrian legal historian, Othmar Hageneder, did a similar study into Austrian sources: Othmar Hageneder, "Zur Ehegerichtsbarkeit des Domdekans von Passau im 15. Jahrhundert," in *Festschrift Franz Loidö zum 65. Geburtstag*, ed. Elisabeth Kovács (Vienna, 1971), 46–54.

and some other English episcopal officialates to which the bishops had transferred the investigation and decisions of marriage litigation. In 2007, another American scholar, Charles Donahue Jr. (Harvard University), harvesting his lifetime of study of episcopal registers, presented a marvelous volume accompanied by an online publication of the sources, which contains a thorough analysis of matrimonial litigation in France, Belgium, and England—more precisely, from the ecclesiastical courts of York, Ely, Paris, Cambrai, and Brussels between 1300 and 1459.³ For Flanders there is an earlier book, written by Myriam Greilsammer, which takes a similar approach, as do several excellent studies published by Monique Vleeschouwers–van Melkebeek.⁴ James Farge has collected the inspiring articles written by the late Michael Sheehan on marriage in medieval Europe.⁵

In Italy a wide research program started by the joint efforts of Silvana Seidel Menchi and Diego Quaglioni from the University of Trento has led to a publication in four volumes of important contributions covering many Italian regions from the fifteenth to the eighteenth centuries.⁶ Cecilia Cristellon, also from this group of scholars, has concentrated on Venetian marriage cases in an exhaustive study.⁷ Considering the enormous number of late medieval ecclesiastical sources for Italy, much work remains to be tackled, not to

3. Charles Donahue, Jr., *Law, Marriage, and Society in the Later Middle Ages* (Cambridge, 2007), with an exhaustive bibliography, pp. 641–54. The publication of the sources together with the Table of Cases, Index of Persons and Places, and Table of Authorities may be found on the website www.cambridge.org/9780521877282.

4. Myriam Greilsammer, *L'envers du tableau: mariage et maternité en Flandre médiévale* (Paris, 1990). See the most recent article by Monique Vleeschouwers–van Melkebeek, “Marital Breakdown Before the Consistory Courts of Brussels, Cambrai, and Tournai: Judicial Separation *a mensa et thoro*,” *Tijdschrift voor Rechtsgeschiedenis* 72 (2004) 81–89.

5. Michael M. Sheehan, *Marriage, Family, and Law in Medieval Europe: Collected Studies*, ed. James K. Farge (Toronto, 1996).

6. Silvana Seidel Menchi and Diego Quaglioni, eds., 4 vols.: *Coniugi nemici, Matrimoni in Dubbio, Transgressioni*, and *I tribunali del matrimonio* (Annali dell'ÆIstituto storico italo-germanico in Trento, Quaderni 53, 57, 64, and 68; Bologna, 2000–2006).

7. Cecilia Cristellon, *La carità e l'eros: Il matrimonio, la Chiesa e i suoi giudici nella Venezia del Rinascimento (1420–1545)* (Bologna, 2010).

mention the records (*imbreviaturae*) of thousands of notaries active in almost every Italian town. Andreas Meyer has recently compellingly shown how the notary sources from thirteenth-century Lucca can be used for the study of medieval marriage litigation.⁸

In Germany as elsewhere in northern Europe, episcopal registers and remnants from ecclesiastical courts are in general much less abundant. Christina Deutsch published the most comprehensive study, focused on the diocese of Regensburg;⁹ also, many important articles by the late Rudolf Weigand were reedited some years ago in a volume of collected studies.¹⁰ In addition to Regensburg there are some other northern regions for which matrimonial litigation before ecclesiastical courts has been scrutinized extensively in recent years: in Switzerland, the diocese of Sion;¹¹ Denmark;¹² Hungary;¹³ and there is a comprehensive study for Sweden.¹⁴

For centuries the papal penitentiary, the most important tribunal of grace at the Roman curia, was not the focus for legal and social historians because its registers, starting in the middle of the fifteenth century, were rediscovered only in 1913, and after that they remained closed to the scholarly community until 1983.¹⁵ Long be-

8. Andreas Meyer, "Wie heiratet man richtig? Der Prozess zweier Frauen um den Luccheser Notar Bonansegna (1234–1238)," in *Worte des Rechts: Wörter zur Rechtsgeschichte, Festschrift für Dieter Werkmüller zum 70. Geburtstag*, ed. Stephan Buchholz and Heiner Lück (Berlin, 2007), 247–66.

9. Christina Deutsch, *Ehegerichtsbarkeit im Bistum Regensburg (1480–1538)* (Forschungen zur kirchlichen Rechtsgeschichte und zum Kirchenrecht 29; Cologne, 2005).

10. Rudolf Weigand, *Liebe und Ehe im Mittelalter* (Bibliotheca eruditorum 7; Goldbach CH, 1993).

11. Valerie Lamont Zuchuat, *Trois pommes pour un mariage: L'Eglise et les unions clandestines dans le diocèse de Sion 1430–1550* (Cahier Lausannois d'histoire médiévale 46; Lausanne, 2008).

12. Per Ingesman, "Danish Marriage Dispensations: Evidence of an Increasing Lay Usage of Papal Letters in the Late Middle Ages?" in *The Roman Curia, the Apostolic Penitentiary, and the Parties in the Later Middle Ages*, ed. Kirsi Salonen and Christin Krötzl (Acta Instituti Romani Finlandiae 28; Rome, 2003), 129–57.

13. Péter Erdő, "Eheprozesse im mittelalterlichen Ungarn," ZRG KA 72 (1986), 250–76.

14. Mia Korpiola, *Between Betrothal and Bedding: The Making of Marriage in Sweden, ca. 1200–1610* (Leiden, 2009).

15. For a preliminary introduction, cf. Ludwig Schmugge, Patrick Hersperger, and Béatrice Wiggenhauser, *Die Supplikenregister der päpstlichen Pönitentiarie aus*

fore that, historians knew from the manuals of the penitentiary that hundreds of formulas for matrimonial dispensation existed.¹⁶ Since 1983 international research in many countries has resulted in the partial editing of the full texts of supplications brought to the pope, for example in Sweden¹⁷ and England,¹⁸ and in part in Norway.¹⁹ For the German-speaking countries of the Holy Roman Empire, whence more than 30,000 supplications up to the year 1500 were registered, publication of *regesta* has been underway since 1995.²⁰

der Zeit Pius' II. (1458–1464) (Bibliothek des DHI in Rom 84; Tübingen, 1996), and Kirsi Salonen and Ludwig Schmugge, *A Sip from the "Well of Grace": Medieval Texts from the Apostolic Penitentiary* (Studies in Medieval and Early Modern Canon Law; Washington, D.C., 2008).

16. Matthäus Meyer, *Die Pönitentiarie—Formularsammlung des Walter Murner von Strassburg* (Spicilegium Friburgense 25; Freiburg, 1979).

17. For the diocese of Uppsala, cf. Sara Risberg and Kirsi Salonen, eds. *Auctoritate papae: The Church Province of Uppsala and the Apostolic Penitentiary, 1410–1526* (Diplomatarium suecanum, appendix: Acta Pontificum suecica II, Acta Poenitentiariae; Stockholm, 2008).

18. Peter Clarke and Patrick Zutshi, eds., *Supplications in the Registers of the Papal Penitentiary from England and Wales, 1410–1503*, 4 vols. (forthcoming beginning in 2012).

19. Torstein Jørgensen and Gastone Saletnich, eds., *Letters to the Pope* (Stavanger, 1999).

20. *Repertorium Poenitentiarie Germanicum (RPG): Verzeichnis der in den Supplicationsregistern der Pönitentiarie vorkommenden Personen, Kirchen und Orte des Deutschen Reiches*, ed. Deutsches Historisches Institut in Rom. Vol. 1: *Eugen IV. (1431–1447)*, text ed. Ludwig Schmugge with Paolo Ostinelli and Hans Braun, indices ed. Hildegard Schneider-Schmugge and Ludwig Schmugge (Tübingen, 1995). Vol. 2: *Nikolaus V. (1447–1455)*, text ed. Ludwig Schmugge with assistance from Krystyna Bukowska and Alessandra Mosciatti, indices ed. Hildegard Schneider-Schmugge and Ludwig Schmugge (Tübingen, 1999). Vol. 3: *Calixt III. (1455–1458)*, text ed. Ludwig Schmugge and Wolfgang Müller, indices ed. Hildegard Schneider-Schmugge and Ludwig Schmugge (Tübingen, 2001). Vol. 4: *Pius II. (1458–1464)*, text ed. Ludwig Schmugge with Patrick Hersperger and Beatrice Wiggerhauser, indices ed. Hildegard Schneider-Schmugge and Ludwig Schmugge (Tübingen, 1996). Vol. 5: *Paul II. (1464–1471)*, text ed. Ludwig Schmugge with assistance from Peter Clarke, Alessandra Mosciatti, and Wolfgang Müller, indices ed. Hildegard Schneider-Schmugge and Ludwig Schmugge (Tübingen, 2002). Vol. 6: *Sixtus IV. (1471–1484)*, text ed. Ludwig Schmugge with assistance from Peter Clarke, Alessandra Mosciatti, and Wolfgang Müller, indices ed. Hildegard Schneider-Schmugge and Ludwig Schmugge (Tübingen, 2005). Vol. 7: *Innozenz VIII. (1484–1492)*, text ed. Ludwig Schmugge with assistance from Alessandra Mosciatti and Wolfgang Müller, indices ed. Hildegard Schneider-Schmugge and Ludwig Schmugge (Tübingen, 2008).

Among the supplications to the pope registered in the penitentiary archives coming from all over Christian Europe, more than 42,000 cases are concerned with matrimonial matters. Thus it is no surprise that many articles have dealt with the new sources for marriage litigation, first by Peter Clarke and David d'Avray;²¹ the latter has also given us an interesting view on medieval marriage in light of its symbolism.²² The focus of research is mainly concerned with the connection of local officialate registers (i.e. the registers of *officiales*, or diocesan judicial officers) with the supplications registered in the Roman Archives, a task which has been mastered in an exemplary way in the articles by Clarke and d'Avray mentioned above, as well as for the northern parts of Italy by Paolo Ostinelli.²³ Through the study of supplications to the penitentiary from the area of Lombardy, Ostinelli has pinpointed the widespread acceptance of medieval canon law rules on marriage²⁴ and the cooperation of local parish priests and episcopal administrations in accommodating the canons to the social realities of the people.

The present book deals for the first time ever with 6,387 supplications brought from German-speaking dioceses to the Penitentiaria Apostolica in Rome between the years 1455 and 1492. Every single supplication is the result of a more or less contentious marriage suit in an episcopal court. We have to remember that the number 6,387 represents only about 5 percent of all matrimonial processes carried out in the ecclesiastical courts of the Holy Roman Empire during this period. I make comparisons with local officialate registers for the dioceses of Constance, Chur, Basel, and Freising, where such

21. Peter Clarke, "English Royal Marriages and the Papal Penitentiary in the Fifteenth Century," *English Historical Review* 120 (September 2005), 1014–29. David d'Avray, "Authentication of Marital Status: A Thirteenth-Century English Royal Annulment Process and Late Medieval Cases from the Papal Penitentiary," *English Historical Review* 120 (September 2005), 997–1013.

22. David d'Avray, *Medieval Marriage: Symbolism and Society* (Oxford, 2005).

23. Paolo Ostinelli, "Wege zur richtigen Ehe: Suppliken in Ehesachen aus dem lombardischen Raum (zweite Hälfte des 15. Jahrhunderts)," in *Kirchlicher und religiöser Alltag im Spätmittelalter*, ed. Andreas Meyer (Schriften zur südwestdeutschen Landeskunde Band 69; Ostfildern, 2010), 205–19.

24. The same observation for England has been made by Frederik Pedersen, *Marriage Disputes in Medieval England* (London, 2000).

sources are available. Work still needs to be done for other areas, such as Salzburg and Cologne.

Finally I would like to express my deep gratitude to His Eminence, James Francis Cardinal Stafford, former major penitentiary of the Roman Catholic Church, who during his activity as head of the office always supported research into the precious archival documents of the Penitentiaria Apostolica and who contributed generously to the publication of this book.

Ludwig Schmugge
Rome, March 2011

Acknowledgments for the German Edition

The preceding book grew out of many years of being busy with a project of foundational research at the German Historical Institute in Rome. Since 1992, together with my wife, Hildegard Schneider-Schmugge, and my co-workers and assistants, I have been able to edit the *Repertorium Poenitentiariae Germanicum* for the Institute. So far, seven volumes of this work have appeared. Thousands of supplications are published in them, which form the material basis of this book. The author knows himself to be standing “on the shoulders of giants,” reaching in long succession from Raymond de Peñafort to Stephan Kuttner. He who is well versed in the literature in this field will notice how strongly this work, apart from the works cited in the notes, is indebted to the publications of (in alphabetical order) David d’Avray, Charles Donahue, Jean Gaudemet, Richard Helmholz, Peter Landau, Paul Mikat, Michael Sheehan, and Rudolf Weigand. For this reason, only a list of the unprinted sources used and a select bibliography are appended to this book. The author has also learned much from students who, in the space of their education at the University of Zurich, occupied themselves with themes from the penitentiary petitions: Daniel Rutz, Milena Svec, Barbara Vannotti, Ivan Vyskozil, and Andrea Wild. The notes alone serve as the inventory of sources drawn upon; quotations are marked with quotation marks or, in case they are recorded in Latin, put in italics.

I express my thanks to my co-workers and students as well as to my friends Inge Strauch (Zurich) and Erich Kusch (Rome), who read the manuscript at an early stage and gave me valuable sug-

gestions. Kirsi Salonen put at my disposal the northern sources she has found. In June 2005, Matthias Osthoff (Tübingen) developed a clever program with which I could statistically evaluate the TUSTEP data of the volumes of the penitentiary. The revisions commission of the penitentiary has looked over the manuscript and raised no objections; the major penitentiary, Cardinal Stafford, has approved the publication. I owe a sincere thanks to Dr. Spiegel from the Stifterverband für die Deutsche Wissenschaft. And finally, my thanks goes to the publisher, Dr. Gottfried Honnefelder, who had the courage to accept this book into the program of his press.

Ludwig Schmugge

Rome, December 31, 2007

List of Abbreviations

AEMF	Archiv des Erzbistums München und Freising, Munich
AKKR	Archiv für katholisches Kirchenrecht
ASV	Archivio Segreto Vaticano
BAC	Bischöfliches Archiv, Chur
Bay HStA	Bayerisches Hauptstaatsarchiv, Munich
C.	<i>causa</i> (of the <i>Decretum Gratiani</i>)
q.	<i>quaestio</i> (within a <i>causa</i>)
c.	<i>canonum/capitulum</i> (within a <i>quaestio</i>)
d.p.c.	<i>dictum post canonum/capitulum</i> (within a <i>quaestio</i>)
COD	<i>Conciliarum oecumenicorum decreta</i>
DHI	Deutsches Historisches Institut
EAF	Erzbischöfliches Archiv, Freiburg
FDA	Freiburger Diözesanarchiv
HS	Helvetia Sacra
HStA	Hauptstaatsarchiv
HZ	<i>Historische Zeitschrift</i>
PA	Penitenzieria Apostolica, Registra matrimonialium et diversorum

xx Abbreviations

QFIAB	<i>Quellen und Forschungen aus italienischen Archiven und Bibliotheken</i>
REC	Regesta episcoporum Constantiensium
RG	Repertorium Germanicum
RPG	Repertorium Poenitentiariae Germanicum
X	<i>Liber Extra</i>
ZRG KA	<i>Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung</i>
ZSKG	<i>Zeitschrift für Schweizerische Kirchengeschichte</i>

Marriage on Trial



Figure 1. A pope sits in judgment over a couple kneeling before him. Beginning of Book 1 of the *Liber Extra*, Wien, Österreichische Nationalbibliothek 2040, fol. 235r.

Introduction

In his work on marriage (1530), Martin Luther called “marriage an external, worldly matter.”¹ Rarely had the reformer made such a fundamental mistake, for from the middle of the twelfth century the Roman Church counted the marital union of man and woman among the seven sacraments, had placed it under its special protection, thoroughly regulated betrothal and divorce with canon law, and laid down norms for sexual behavior in and outside of mar-

1. “... die Ehe ein eusserlich, weltlich Ding.” *D. Martin Luthers Werke, Sonderedition der kritischen Gesamtausgabe, unveränderter Nachdruck der Ausgabe von 1883* [Weimarer Ausgabe], vol. 3.3 (Graz, 1964), 205; English translation: “On Marriage Matters,” trans. Frederick C. Ahrens, in *Luther’s Works*, American ed., vol. 46, *The Christian in Society*, vol. 3, ed. Robert C. Schultz (Philadelphia: Fortress Press, 1967), 265. On Luther’s doctrine of marriage, along with recent literature, cf. Thomas D. Albert, *Der gemeine Mann vor dem geistlichen Richter: Kirchliche Rechtsprechung in den Diözesen Basel, Chur und Konstanz vor der Reformation* (Quellen und Forschungen zur Agrargeschichte 45; Stuttgart, 1998), 326–29.

Translator’s Note: In context, Luther’s statement makes an existential or metaphysical point, not a historical one. Luther was saying that marriage is, in its essence, a worldly thing and thus should be handled by secular authorities, not by the church. He was not making a historical judgment about how marriage had been handled in late medieval society. Throughout the book, Schmugge will refer to this short quotation by Luther as if the reformer had been making such a historical judgment. Schmugge’s ultimate point, nevertheless, is valid; that is, his book shows how involved the church was in marital matters in late medieval German society.

2 Introduction

riage. Perhaps the Wittenberg reformer wanted merely to formulate a program, be provocative, and make an issue of an essential area of the influence of the “papist church.” Whether erroneously or intentionally, Luther stumbled upon a wasp’s nest with his claim, because, since the thirteenth century (as has been proven through thousands of documents), papal and episcopal courts throughout western Christendom, from Iceland to Cyprus and from Portugal to Poland, exercised an enormous influence on the marital behavior of men and women, enforced legally defined impediments to marriage, and drew couples wanting to marry as well as already married couples before ecclesiastical tribunals. Marriage was no “worldly thing” in the Middle Ages.

To the distress of historians, of the countless acts of legal proceedings that were produced in spiritual courts in dioceses of the German empire in the late Middle Ages, only a sparse remnant remain. This is no surprise, because sources related to individuals have in general only a small chance of outlasting the lifetime of the person concerned; their *Überlieferungschance* (Arnold Esch) was minimal. Like the tip of an iceberg, more than six thousand supplications from German spouses project out of the sea of sunken records, and that thanks to the unique transmission in the Vatican Secret Archives. They come from the holdings of the Apostolic Penitentiary, a papal office that still exists today. Since the thirteenth century, within the scope of their spiritual jurisdiction, popes handed over extensive powers for absolution and dispensation to the office, powers that concerned the life of all believers, whether lay or cleric. Whoever had violated the canon law in matters reserved for the pope’s jurisdiction or whoever wanted to appeal a bishop’s decision saw himself compelled to seek grace from the pope.

This book analyzes the supplications of German couples registered in the penitentiary from the second half of the fifteenth century. Until the year 1912 these sources lay dormant in forgotten and walled-off rooms of the Vatican, then remained closed to use for another seventy years, and have only been accessible to historical research since 1983. The documents display a unique character; they consist of supplications that are addressed to the Holy Father and

that have a Janus face. They consist partially of very personal situations in life (so-called ego-documents), partially of legal formulas. They are in any case precious witnesses to a *juristischen Realgeschichte* (Dieter Grimm), or real-life legal history. To that end, the difficulties that their utilization poses to the historian are not meager. The flash-photo-like illumination of an isolated incident in life makes any attempt at a classic biographical portrayal fail from the start. The persons involved differ too strongly in their corporative origin for a collective biography. How should one then proceed? In the present investigation, through a mixture of source-based, narrative portrayal, supplemental statistics (the large number and the partially serial character of the documents invite such an approach), and particular analysis of social and legal backgrounds, I attempt to bring these couples who came before ecclesiastical courts to life for the reader as a part of the colorful history of the late Middle Ages.

In the first chapter I examine the character of the registered texts, analyze their form and legal conditions as well as the procedure in the granting of such letters of pardon at the papal curia, and expound upon examples. The second chapter treats the canonical prerequisites for dispensation and absolution in marital affairs—above all, the crucially important impediments to marriage. In the third chapter, with the help of exemplary individual penitentiary supplications, I put forward the diverse requests for pardon in all their variety, tell the stories of the couples, and investigate the effects of the ecclesiastical norms for marriage law on the sexual behavior of men and women. Finally, in the fourth chapter, I direct the reader's view away from Rome to several German dioceses, to the extent that the source transmission allows it, to study the other side of the coin, namely the procedure before the diocesan courts preceding the Roman processes. I conclude by summarizing the results.



The Treasures of the Papal Pardon Office

Thousands of highly interesting documents are kept in thick, red volumes of registers in a separate division of the Vatican Secret Archives in Rome. They come from the papal penitentiary, the most important administrative office of the Roman curia next to the chancery and camera. The volumes contain written requests for pardon, called supplications, which are of singular value for European history in the late Middle Ages. Those who wrote the requests for pardon were laymen and clerics from all parts of Christendom. Why did these people ask for pardon from the pope? The answer is simple: each writer of a supplication had in one form or another violated, or sinned against, canon law and thus the prescriptions in force at that time (and to some extent still today in the Catholic Church). As a consequence of their behavior, these sinners were often not only excluded from the ecclesiastical community but also discriminated against socially. Only the apostolic see (*sedes apostolica*), as the institution of the papacy at that time was titled, was able to help them out of their trouble. As a result, thousands of men and women asked for pardon from the Holy Father and received absolution from ecclesiastical punishments and dispensation from him, so that, for example, they might remain married in spite of a marital impediment. The pope, who by the late medieval period was already very busy, could not handle the rising flood

of requests alone—several dozen converged at the curia each day.¹ Since the thirteenth century, he had therefore delegated and handed over the consideration of them to a particular office, the penitentiary, which expanded from the central court of the Roman Church for matters of penance, confession, and pardon into a veritable agency in the fifteenth century.

The Penitentiary: Penance and Pardon Office of the Church

What kind of office was the *Poenitentiaria Apostolica*, and how did it work? Toward the end of the Middle Ages more than 200 people worked at the penitentiary. The office (*dicasterium*) was led by a cardinal, the major penitentiary, whom one or more deputies (called *regentes* or regents) of episcopal or abbatial rank assisted. Subordinate to the major penitentiary were twelve confessors appointed by the pope in St. Peter's, called minor penitentiaries, as well as an additional twenty-four confessors named by the major penitentiary and their substitutes at the basilicas of San Giovanni in the Lateran and Santa Maria Maggiore. In times of great pressure, such as on the occasion of a Jubilee, like 1450, 1475, and 1500, additional priests, mostly members of mendicant orders, could also be assigned as minor penitentiaries. They were supposed to have mastery of several languages, to hear the confessions of the pilgrims who had come to Rome, and issue so-called "church notes" (*litterae ecclesiae*) for them about their confessions. These were indeed given to those confessing, but, since they were not registered in Rome, *litterae ecclesiae* do not appear in the registers of the penitentiary. In the Jubilee years 1475 and 1500 the minor penitentiaries may have granted absolu-

1. *Translator's Note:* Business at the papal curia had already become overwhelming in the course of the twelfth century, and, by then, key developments had already taken place in the papal bureaucracy. Additional business necessitated further advances in and organization of that bureaucracy. On the earlier developments at the papal curia in the late eleventh and twelfth centuries, cf. I.S. Robinson, *The Papacy, 1073–1198: Continuity and Innovation* (Cambridge, 1990). On bureaucratic developments related to the time in question here, cf. Peter Partner, *The Pope's Men: The Papal Civil Service in the Renaissance* (Oxford, 1990).

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tion to thousands of pilgrims.² Today one cannot find the faintest trace of these letters of pardon in the Vatican, but one does find them in European archives. The people to whom the minor penitentiaries might not have granted absolution because they were not qualified to do so had to submit their requests to the pope himself. And only these supplications were then entered into the red registers.

How did a sinner come from Cologne or Constance to the papal seat of mercy? In almost every case, as will be shown, a legal process before the local episcopal court preceded the supplication. At that process recourse to the apostolic see was proven to be necessary. Proctors were the ones who took care of mediating between the petitioner (who outside of Holy Years went only rarely to Rome in person) and the papal curia. These men were very well acquainted with the practices of granting pardons at the curia and with the penitentiary officials, were for the most part trained in canon law, and were present in all ecclesiastical courts in the German empire as well as at the Roman curia. In Rome pilgrims found their "office" (*bottega*) at the great basilicas of St. Peter, San Giovanni, and Santa Maria Maggiore, where the minor penitentiaries also officiated. From the fifteenth century, the papal pardon office required that a person have a proctor, even as to this day there exists a requirement for counsel in higher courts. No petitioner could submit a request without a proctor's mediation.

The Roman proctors came from all over and needed a papal license; they had formed themselves into a college, a kind of association. Although their college stipulated that there were not supposed to be more than twenty-four holders of the office, plus six additional ones in Jubilee years, substantially more solicitors (as the proctors were also called), who were not always clerics, were active in Rome.³ Moreover an ecclesiastic who was occupied with other business at the curia could occasionally carry out the tasks of a proctor. Every proctor involved in the pardon business had to state his name on the supplication worked up by him. The office of proctor could be purchased

2. Emil Göller, *Die päpstliche Poenitentiarie von ihrem Ursprung bis zu ihrer Umgestaltung unter Pius V*, vol. 2.1 (Rome, 1907–11), 38ff.

3. *Ibid.*, 2.2.78.

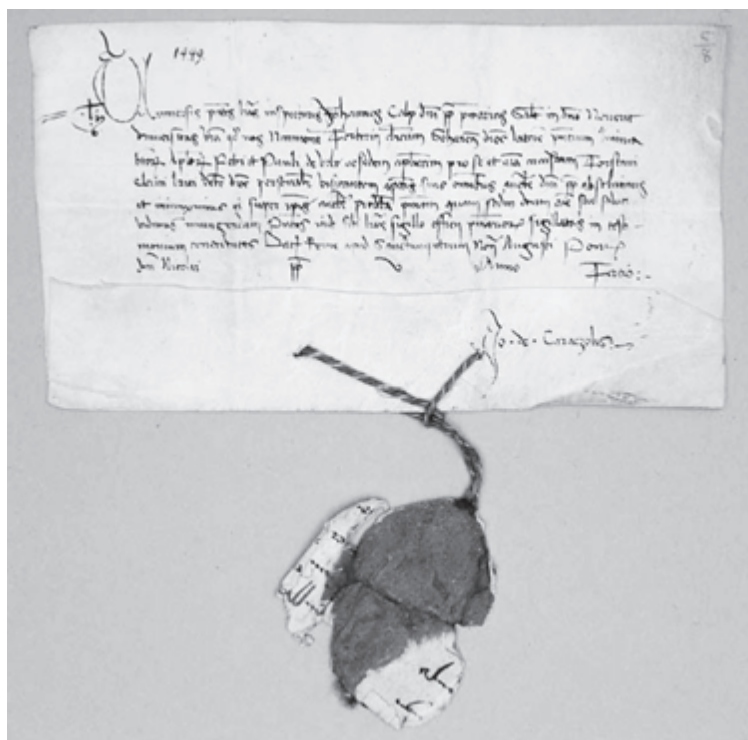


Figure 2. *Littera ecclesiae* issued on August 5, 1449 by the German minor penitentiary, Johannes Calp, for a pilgrim from the Skara bishopric in Sweden. Stockholm, Riksarkivet.

from the pope, but then it turned quite profitable because the petitioners had to pay the holders of the office for their services. Unfortunately we do not know the amount of their honorarium.

How did the supplication of a sinner make its way to Rome and back to him again?⁴ Once it had been accepted, every supplication directed to the pope in written form was entered into the peniten-

4. On this point, see fundamentally Göller, *Die päpstliche Poenitentie*, 2.1.9–131. Kirsi Salonen, *The Penitentiary as a Well of Grace in the Middle Ages: The Example of the Province of Uppsala 1448–1527* (Annales Academiae Scientiarum Fennicae 313, Helsinki, 2001).



Figure 3. The seal of the major penitentiary with the inscription *Sigillum officii sacre penitentie apostolice*. Enthroned Mary with the baby Jesus, and underneath a shield of arms with crossed keys. Staatsarchiv Thurgau.

tiary's register. We do not know whether supplications were also rejected and what then happened to them. The proctor either heard the nature of the petitioner's request in person or received the request for pardon already in written form; he then converted it into curial Latin and submitted the supplication on paper to the office. Two clerics of the penitentiary looked over the request there. In difficult cases a specialist in canon law, the auditor, attended to the proposal. If form and substance met the usual requirements of the curia and if the head of the office, or his delegate, fundamentally accepted the supplication, it was given by a *distributor* over to correctors, who made a draft of the letter of pardon on the basis of the relevant forms. The final approval (*signatur*) came through a handwritten note either of the major penitentiary or one of the regents, to whom the pope had given all-inclusive competences, so-called *facultates*, for the granting of pardons. One of the twenty-four scribes then turned the draft into a final copy of the letter (*littera*). This copy was put once more before the head of the office and furnished with the date of the supplication. A fee was assessed and the document sealed. The proctor received the original of the *littera* and handed it off to the petitioner (if he was in Rome) or sent it to him in his homeland. The scribes of the registers, whose work was inspected by correctors, made a copy of the supplication and filed it according to the diverse pardon subject matter only after the supplication had completed this course through the "departments" of the pardon office. It was later

inserted into the red-bound registers. In terms of technical source terminology, these volumes constitute *Amtsbücher*, the official books of an office.⁵

From the middle of the fifteenth century the practice of the registrar was properly standardized and had led to the creation of one volume per year devoted to a register of supplications. Since the individual papers were copied not in chronological but rather in topical order, the supplications pertaining to one subject remained grouped together, so that the matrimonial supplications still today form their own unit, usually at the beginning of the volumes. As will be further laid out below, certain details and conditions of the grants of pardon are known not necessarily from the supplication but only from the notice to the petitioner, the *littera*, because the registered supplication often severely shortened the text of the approval in order to economize on space. Until the pontificate of Pope Paul II (1464–71) the texts of the supplications find rather scant expression in the registers; they do not contain the entire text specified by the curial formulas for the conferral of the pardon but only the crux of the request and the office's ensuing approval. As a rule, however, all the relevant canonical formulas for the granting of the pardon are contained in the registered copies, as a comparison of the texts of the supplication and the *littera* shows in the cases in which the *litterae* can still be located in the archives of Europe today. In contrast to the papal chancery, the penitentiary did not keep a register of *litterae* that had been sent out.

6,387 Fates: Papal Letters of Pardon for German Couples

Between 1455 and 1492, 114,480 supplications from every part of Christendom were registered in Rome by the scribes of the penitentiary. Supplications pertaining to marriage problems comprise the largest part of them, namely 37.2 percent, amounting to 42,560. Of these, almost half (48 percent) come from Italy, with the trend in-

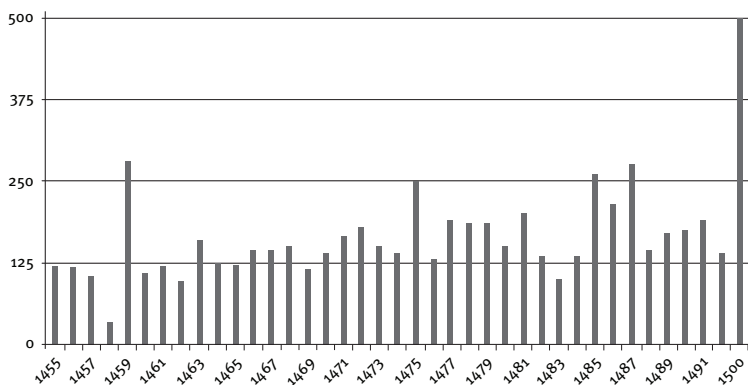
5. On this point, cf. Erich Meuthen, "Der Quellenwandel vom Mittelalter zur Neuzeit und seine Folgen für die Kunst der Publikation," in *Quelleneditionen und kein Ende? Symposium der MGH und der Historischen Kommission bei der Bayerischen Akademie der Wissenschaften*, 1998, ed. Lothar Gall und Rudolph Schieffer (HZ, Beiheft 28, Munich, 1999), 17–36, here 19ff.

creasing in the named period (from 30 to 53 percent). The proportion of France (16 percent), the German Empire (14 percent), and the British Isles (9 percent) remains steady. The proportion of requests from Spain and Portugal were reduced from twenty-two to nine percent. At first glance, the unequal distribution of the supplications from the individual national groups, which has no relationship to their population numbers, is surprising.

For this study, I have drawn only upon the supplications to the penitentiary from the area of the German empire and only upon those registered in Rome in the period between 1455 and 1492. For comparison with the Holy Year 1475, I have also included the German supplications from the year 1500. In total, 6,387 supplications come together—389 from the pontificate of Pope Calixtus III (1455–58), 660 from that of Pius II (1458–64), 943 from the time of Paul II (1464–71), 2,223 from the pontificate of Sixtus IV, which lasted fourteen years (1471–84), and 1,674 from the pontificate of Innocent VIII (1484–92), as well as an additional 498 from the year 1500, which Alexander VI (1492–1502) celebrated as a Jubilee. The supplications from the first year of Pius II's pontificate have been lost, from his election on August 19, 1458, through February 1459.

Of the 6,387 supplications, the great majority (5,916) were entered under the rubric *de matrimonialibus* in the penitentiary's register. An additional 471 supplications about a marriage dispensation appear under two other rubrics in the volumes, the all-encompassing rubric "miscellaneous" (*de diversis formis*) and another called *de declaratoris*. Geographically, the realm of investigation covers the Holy Roman Empire of the German nation, thus a good portion of middle Europe. Since the penitentiary organized the petitioners according to their home dioceses, the present study considers all the bishoprics in which people of a "German" tongue were settled in the fifteenth century, even if these dioceses lie today partially or completely in Poland, the Czech Republic, Slovakia, northern Italy, Switzerland, Alsace, north-eastern France, Belgium, or Holland. The bishoprics considered reach from Schleswig in the north to Trent in the south and from Liège in the west to Gniezno, Krakow, and Ljubljana in the east.

The distribution over the period points to a slight increase in reg-

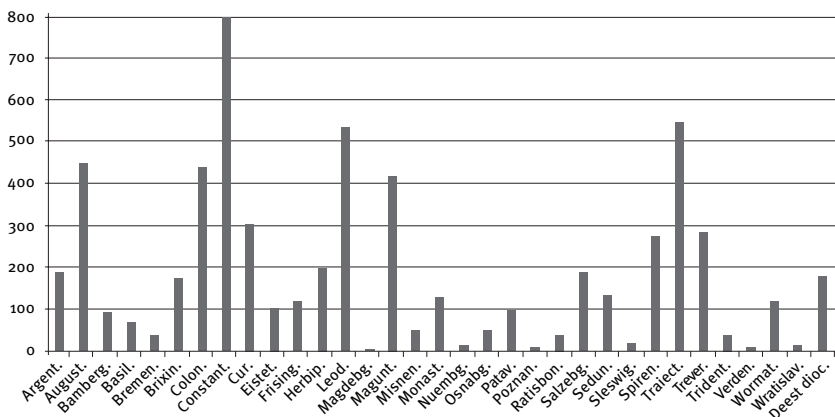


Graph 1. Number of Supplications about Marriage Issues per Year, 1455–1492 and 1500

istrations. The “runaways” of the statistics in the years 1459, 1475, 1485, and 1500 are explained by special historical events. In Mantua in 1459 (273 supplications), the so-called Day of the Turks took place. After the “September 11 of the fifteenth century,” the conquering of Constantinople on May 29, 1453, delegations from all of Europe negotiated in the city of Gonzaga with the Piccolomini pope (Pius II) about a crusade against the Turks. The assembled congress participants diligently used the occasion to draw from the wellspring of Roman grace, which can be gathered from the high number of supplications. The Holy Years 1475 and 1500 attracted many pilgrims. Given the numbers of 247 supplications versus 498, respectively, it is clear that far more pilgrims came to Rome for the Jubilee in 1500 than had come twenty-five years earlier. The years 1485 and 1487 surrounded the coronation of Maximilian in Frankfurt (in 1486) and had necessitated intense negotiations of the German royal court with the pope; these contacts with Rome led to an above-average number of supplications.

More telling for the situation in the German empire and the intensity of the “Rome connection” of individual territories is the distribution of the supplications according to dioceses. In keeping with the German tradition of research rooted in the nineteenth century,

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Graph 2. Number of Marriage Supplications per Bishopric

for the evaluation of the Vatican register, I refer to these dioceses as areas with German-speaking inhabitants. The 6,387 supplications come out of a total of sixty dioceses; nevertheless, only thirty-eight of them were evaluated for the statistics because not a single marriage supplication of a German petitioner reached Rome from ten dioceses, to be specific Chlumec, Courland, Gurk, Lavant, Lebus, Litomyšl, Vienna's Neustadt, Ratzeburg, Samland, and Trieste. From another twenty-four, fewer than twenty requests per diocese were recorded in the register of supplications during the entire period of investigation (Brandenburg 3, Kamień Pomorski 9, Chiemsee 19, Gniezno 9, Havelberg 3, Hildesheim 7, Krakow 16, Ljubljana 1, Lübeck 1, Magdeburg 5, Merseburg 5, Olomouc 2, Saaremaa 5, Paderborn 5, Pomesania 1, Prague 9, Reval 9, Riga 5, Seckau 1, Tartu 2, Warmia 1, Vienna 1, Włocławek 7, and Schwerin 5). In 183 supplications the diocese is not specified, 135 of which fall in the year 1459, when the curia found itself in Mantua and the traffic of the curia's business proceeded in a somewhat disorganized fashion.

The high number of supplications from Constance and Mainz is explained by the geographical reach of these, the two largest dioceses, whereas Augsburg, Cologne, Liège, and Utrecht had especially large urban populations. In total, about 80 percent of all supplications came

from the west or south of the German empire. The northern and eastern lands hardly ever turned to Rome for a pardon in matters of marriage. Was Martin Luther's thesis about marriage as a "worldly thing" already anticipated in these later predominantly Protestant regions?

In the wheels of the complex machinery of the papal curia, requests for pardon in marital matters were also worked on through the signature of the pope or, rather, his referendaries in two other central agencies, the camera and the chancery. What is the ratio of the numbers of matrimonial dispensations issued there to those granted through the penitentiary? On the basis of volumes VIII and IX of the *Repertorium Germanicum*, in which all of the German matters coming out of the camera and the chancery are catalogued, one can make a comparison of the massive number of marital dispensations for the Holy Roman Empire granted by these papal offices on the one hand and by the penitentiary on the other during the pontificates of Pius II and Paul II (1458–71).⁶ The result is as clear as one could wish for: the papal administration viewed the penitentiary as the primary pardon office in marital matters. Under Pius II only 64 German marriage dispensations were entered into the registers of the chancery and the camera, whereas the number approved by the penitentiary came to 660.⁷ Under Paul II this ratio of circa 10:1 became still greater. Only 68 German letters of pardon in the register of the chancery stand opposite the 943 letters of the papal penitential court registered under the rubric *De matrimonialibus*.⁸ It seems as though *petentes* turned first to the one papal office and then to the other. The patrician Wilhelm von Burscheit from Trier, a partner in a money-exchange firm and a judge of others in his social class in Luxemburg, had received a dispensation from the penitentiary on March 30, 1461, from spiritual consanguinity for his marriage with Margareta. Scarcely two years later, he had opened a process against her before the officialate court in Trier; she had apparently not wanted to marry him and now wanted out of the union, and Wilhelm wanted the court to confirm that

6. RG 8 and 9 as well as RPG 4 and 5.

7. Ludwig Schmugge, Patrick Hersperger, and Béatrice Wiggerhauser, *Die Supplikenregister der päpstlichen Pönitentiare aus der Zeit Pius' II. (1458–1464)* (Bibliothek des DHI in Rom 84, Tübingen, 1996), 79 and 88.

8. They include 20 cases of *cognatio spiritualis*, 15 of *affinitas*, 22 of *consanguinitas*, and 11 miscellaneous. Cf. chapter 2 for an explanation of these terms.

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their marriage was valid. Then, on February 26, 1463, he made a motion at the papal chancery for his wife to be shut up in a nunnery so that she could not contract a marriage with another man.⁹

I have drawn upon the content of the supplications from the chancery for this study, but they do not factor into the statistical evaluation of the 6,387 supplications of the penitentiary. The trend for ever fewer marital matters to be handled in the chancery appears to have come to a halt under Sixtus IV. As in marital dispensations so also in other areas of giving pardons, no clear separation of jurisdiction between chancery and penitentiary existed at any point in time. The course of business of all the “agencies” at the apostolic see was influenced in no small way by the personal networks of the people active at the curia. A single example may make the case in point. In 1471, the young Cardinal Francesco Gonzaga found himself, “through the shadow of his cardinal hat” (“pur l’umbra del cappello mia”), in the situation of taking care of a marital dispensation for a citizen of Mantua in the space of twelve hours at the papal chancery, and completely free of charge at that, instead of making the normal but time-consuming way over to the penitentiary (“per lo officio de la Penitenziaria, dove ordinariamente se haria potuto, ma col piombo per piu honore et auctoritate”).¹⁰

Three Forms of Approval

There were three possibilities for a signature from the papal penitential court for requests that were given a positive response. They came in the legally distinct form of *litterae*, which were in each case then written in the name of the major penitentiary and sent out. The letters could be signed with the following words: (1) “Let it be as prescribed in the formulary” (*fiat [ut] in forma*); (2) “Let it be on the basis of a special jurisdiction given over entirely to the office by the pope” (*fiat de speciali*); or (3) “Let it be according to the special and express

9. RPG 4.411 and RG 8.5833.

10. Arnold Esch kindly informed me of this statement from a letter by Francesco to his father on June 5, 1474; the letter currently resides in the Gonzaga family archives in Mantua.

Table 1. Forms of Signatures for Marital Dispensations

Pontificate	Papal Signature				
	Fiat de speciali	Fiat de speciali et expresso	Fiat (ut petitur)	Fiat in forma	Fiat ut infra
Calixtus III	248	128	2	5	—
Pius II	438	193	7	3	—
Paul II	786	133	2	3	—
Sixtus IV	1382	635	2	3	81
Innocent VIII	1016	488	1	6	72
AD 1500	400	95	—	7	—
Total	4,270	1,672	14	27	153

command of the pope" (*fiat de speciali et expresso*). The first form of approval could signify that an essentially positive answer to the request for pardon had been given but that additional wishes of the suppliant, ones that went beyond what was provided in the formulary, were not approved. The second form of signature was by far the most common among all the marriage dispensations; these were awarded by the penitentiary on the basis of papally given *facultates* (powers or authority). In the third case, the supplication of the petitioner received the express consent of the pope, since the request overstepped the proper authority of the office and since the pardon could be approved only by the representative of Christ and successor of the apostle Peter, the holder of the spiritual fullness of power (*plenitudo potestatis*) himself. A special form of signature was particular to requests for a declaratory letter (*littera declaratoria*); in this case the letter was always signed with the words "let it be as specified below" (*fiat ut infra*), whereupon the stated position of the auditor followed, who gave his judgment on the case and ordered (*committatur*) the local bishop to proceed according to his instructions.

As is evident from the table, the penitentiary independently decided the vast majority of supplications, at least those that can be investigated down to the signature, on the basis of the authority con-

ferred on the head of the office (70 percent). Scarcely twenty-seven percent (1,672) of the supplications were laid before the pope, while merely three percent received the other forms of approval. The difference in total numbers from the 6,387 supplications results from missing information in the registration.

Dispensation and Declaratory Letters

An additional formal aspect of the conferral of pardons through the penitentiary still requires clarification. It has to do with the registration of supplications under various rubrics addressed above. All the supplications recorded under the rubric *De matrimonialibus* and those from the domain *De diversis formis* led to a “normal” *littera* with the granting of a papal pardon. The cases recorded under the rubric *De declaratoriis* are different. Here the *petentes* asked the pope for a sort of declaration of honor (one could also say “certificate of innocence”). The *littera declaratoria* attested that the requester had not committed a certain act or sin and thereby guaranteed him immunity from punishment. Cases of this kind were without exception put before the auditor, who had looked into the legal admissibility of the request in advance. After this he transferred the proceedings to the local bishop to review the requester’s statement and to pronounce a decision. After the facts of the case had been confirmed by the *ordinarius*, a declaratory letter possessed “the legal force of a final decision.”¹¹

A supplication of Nikolaus Schacher of Würzburg will serve as an illustration of this.¹² After he had secretly married a certain Dorothea, his parents, to whom the girl was not acceptable because of her low standing, compelled him to have himself ordained as a subdeacon. He would thereby have been obligated by canon law to be celibate, and a marriage would have been out of the question for him. Nikolaus did not want to become a churchman, however, but wanted instead to remain faithful to his Dorothea. He asked for a statement

11. List of *taxae* from the years 1455–58: “Nota quod omnis declaratoria est iudiciaria et vim sententie diffinitive obtinet.” Cf. Wolfgang Müller, “Die Gebühren der päpstlichen Pönitentiare (1338–1569),” *QFIAB* 78 (1998), 242, l. 136.

12. RPG 6.3692 (year 1480).

from Rome that their marriage was contracted validly and therefore that the ordination was inadmissible. The major penitentiary, Julianus della Rovere, the later Pope Julius II, signed the supplication, and the regent, Antonio Maria Parentucelli, Bishop of Luni-Sarzana, referred it to Giovanni de Ceretanis, Bishop of Nocera, who was acting as auditor. He sent the case over to the *ordinarius* in Würzburg for procedural investigation, with the instruction to grant Nikolaus's request if his claims held true.¹³ Rome thus gave precedence to the earlier contracted marriage. Nikolaus did not have to give up his Dorothea, and his parents had gone to all that trouble for nothing—the ordination was invalid.

In the numerous supplications one must distinguish another kind of requested papal *littera* from this type of *littera declaratoria*. The Avignon Pope Clement VI (1342–52) had decreed in a constitution¹⁴ that, if the distance from a common ancestor was not the same in a couple, for example in the case of a consanguinity in the third and fourth degree, a so-called “declaratory *littera*” must be issued in addition to a *littera* with dispensation from the too-close relationship.¹⁵ On this matter Pope Gregory IX (1227–41) had previously decided concerning unequal lines of descent that, for the expedition of the supplication, the more distant degree of consanguinity should be authoritative,¹⁶ whereas Pope Clement later prescribed the closer degree as the basis for future determinations.¹⁷ There are two supplications among the supplications of the pontificate of Sixtus IV (1471–84) in which *petentes* applied for a *littera* from Pope Gregory XI (1371–78, Avignon).¹⁸ In this case they referred to Gregory's chan-

13. Ibid.: “committatur ordinario et si vocatis vocandis de premissis constitutur, declaret ut petitur.”

14. Étienne Baluze, *Miscellanea novo ordine digesta* ... ed. J. D. Mansi (Lucca, 1762), 3.118.

15. Schmutge et al., *Supplikenregister*, 87ff.; Göller, *Die päpstliche Poenitentiarie* 1.1.113.

16. X 4.14.9; on this point, cf. also Matthäus Meyer, *Die Pönitentiarie-Formularsammlung des Walter Murner von Straßburg* (Spicilegium Friburgense 25, Freiburg/CH, 1979), 108.

17. Emil Göller, “Walter Murner zu Straßburg und das päpstliche Dispensationsverfahren im 14. Jahrhundert,” ZRG KA 2 (1912), 182–207.

18. RPG 6.1134 and 1137, both from the year 1478.

cery rule 74,¹⁹ which had declared such a *littera declaratoria* necessary also in the second and third degree of physical consanguinity. For this type of confirmation, fees were of course collected. Fees were not low, and according to financial records varied from eighteen to twenty *grossi* tournois, thus approximately two camera florins or the average value of a cow. If one considers that fourteen percent (893 to be exact) of all suppliants for any type of case had to pay this not inconsiderable sum, in the cases with fees for the *littera* (about which there is more to be said later), married couples who needed such a certificate faced a double burden of approximately the same amount. According to geographical origin, almost eighty percent (708) of the requests for such a *littera* came from the dioceses of the Rhineland and southern Germany.²⁰

Double Registration

The 6,387 supplications investigated here do not correspond to the same number of married couples. Several requests of the same couple with identical pleas were double-entered in the register, apparently without this having bothered the penitentiary entering the documents. The supplications of a couple from Cologne, both registered with the date of May 28, 1459,²¹ demonstrate this, as well as the case of a couple from Salzburg, whose requests were entered in the register under April 10, 1462.²² Two other requests of identical content and recorded under the same date of April 6, 1479,²³ albeit signed once by the major penitentiary and the other time by the regent, are proof that the office did not notice that the request had been granted twice in identical form. How can such double entries be explained? The vast majority of all supplications for marriage dispensations were brought to Rome not by the petitioners them-

19. Emil von Ottenthal, *Regulae cancellariae apostolicae: Die päpstlichen Kanzleiregeln von Johannes XXII. bis Nikolaus V.* (Innsbruck, 1888; repr. 1968), 40.

20. The 708 include 64 from Utrecht, 73 from Liège, 44 from Cologne, 38 from Trier, 63 from Mainz, 41 from Speyer, 32 from Würzburg, 161 from Constance, 58 from Augsburg, 59 from Chur, 40 from Brixen, and 35 from Sion.

21. RPG 4.20 and 43.

22. RPG 4.529 and 530.

23. RPG 4.1274 and 1275.

selves but rather “by post.” Thus two different proctors at the curia could have been occupied with taking the pardon request through its course, as we can gather from the example of a couple from Chur. Their supplication was carried to the penitentiary for the first time by the proctor Broyel on July 26, 1459, a second time by his colleague Weythas on August 26, 1459.²⁴ The resultant issuing of two *litterae* did not ever have to be apparent to the office if different proctors carried out the business. In this way both proctors made money; the requesters most certainly incurred double costs.

One should distinguish these genuine double registrations from requests with different content, namely supplications in which a mistake had been made in the first request that was corrected in the second go-around (so-called *reformationes*).²⁵ The erroneous information about facts or people had to be set aright in a second supplication, as the principle of *veritas precum* observed at the Roman curia (explained below) demanded. Supplications with false information were invalid, even if the penitentiary had responded to them in the affirmative. These mistakes could be easily recognized in a legal process in the homeland of the requester (*in partibus*) since the *littera* was compared there with the previous records of the legal process before it was handed over to the requester.

In this way, in a first supplication registered on January 5, 1461, Johannes Wisinger and Anna Kirchheimerin from the diocese of Passau had claimed to be related to one another in the fourth degree.²⁶ In the second supplication on May 21, 1462, they corrected the extent of consanguinity to the third degree, entirely because the official in Passau, on the basis of his records, had refused to accept the first *littera*. The couple not only had to pay a double fee; in the second case the penitentiary charged them a fine (*compositio*) as well, as was common in cases of an impediment in the third degree of consanguinity. In an analogous case of *reformatio*, this penal fee amounted to 30 camera florins.²⁷ Peter and Agneta from the bishop-

24. RPG 4.81 and 193.

25. On this point, cf. Schmugge et al., *Supplikenregister*, 63ff.

26. RPG 4.381.

27. RPG 5.540 and RG 9.5117. Andrea Wild: “‘An schuoler und an phaffen’:

ric of Cologne also slipped false information into their supplication of March 11, 1481 for dispensation from spiritual kinship. They had claimed not to have known anything about the impediment.²⁸ More than a year later, on April 19, 1481, the register scribe made note of their now corrected supplication, for it had been proven in Cologne that they had to have been well aware of it.²⁹ Nothing therefore remained for them except to approach the Roman well of grace anew. The double supplication of Laurentius Boeglin and Elsinä of February 19, 1488 and of March 7, 1488 was also a matter of a *reformatio*.³⁰

Precise insights into the complicated procedure of the papal administration of pardons can be gained if a request for a marriage dispensation by one and the same couple had been submitted to both curial offices, the chancery and the penitentiary. Hieronimus and Victoria de Strasoldo in the patriarchate of Aquileia had made a supplication on September 1, 1468 to be able to marry despite the impediment of a spiritual relationship between them and to receive a bull of Paul II.³¹ This has been transmitted in the Lateran register. It had been sent over to the bishop of Concordia to be carried out by him, since the see of the patriarchs of Aquileia was not occupied between 1465 and 1470. Bishop Antonius of Concordia appears, however, not to have granted the pardon, because the scribe of the penitentiary registered a new supplication by the same couple eight months later.³² In that supplication they mention the received papal dispensation and correct the information given at that time: only after the marriage had they realized that a consanguinity of blood in the fourth degree existed between them, and for that reason they asked for dispensation from this impediment on May 22, 1469 and for the permission to be able to remain married, all of which was also allowed by the major penitentiary.

Klandestine Ehen in den Supplikenregistern der päpstlichen Pönitentiarie (1458–1471)“ (Lizentiatsarbeit, University of Zurich, 2004), 99–100.

28. RPG 6.1553.

29. RPG 6.1778.

30. RPG 7.739 and 741. Additional supplications with a *reformatio*: RPG 4.467 and 469; RPG 5.154 and 38; 5.515 and 687; 5.276 and 376.

31. RG 9.2552: ASV Reg. Lat. 666, fol. 122v.

32. RPG 5.660.

Peter Kegeler and Katharina from the Lorch of Mainz had to follow the other course through the curial offices. On June 21, 1468, the penitentiary had conferred on them the permission to remain married in spite of kinship by marriage in the fourth degree. The two declared in the supplication that they had not yet consummated the marriage.³³ The archbishop of Mainz might not have granted the pardon, because more than a year later, on July 22, 1469, another supplication with emendations was registered in Rome, this time in the register of supplications in the chancery.³⁴ In this one the two declared that they were related in the third degree and had contracted the marriage clandestinely in the knowledge of that fact and had also consummated the marriage. On this count they fell into automatic excommunication. They asked the Holy Father for absolution and for the grace to be able to remain in their marriage or contract it anew as well as for the legitimization of their children. A corresponding bull appears not to exist. Eight months later, on March 23, 1470, another supplication for the Mainz couple is found in the supplication register of the chancery.³⁵ Now they claimed to have known nothing of the kinship by marriage in the third degree between them when they publicly married. Only afterwards had they come to a knowledge of the impediment and asked now once more that they be able to continue all the same in the marriage. In the case of Peter and Katharina, then, three contradictory proposals exist. How did the pope and the offices react to this?

The papal bull based on these supplications was pronounced on September 5, 1470.³⁶ It expressly states that a "series of supplications" from this couple had come before the pope. The narrative committed itself to one of the variant accounts but took the offenses committed into consideration. The couple, so states the papal writ, had married, consummated the marriage, and had children in ignorance of the impediment. Only later were they informed of the kinship by marriage in the third degree. Moreover, the pope had ap-

33. RPG 5.540.

34. ASV Reg. Suppl. 646, fols. 169r–170v.

35. ASV Reg. Suppl. 655, fols. 106v–107r.

36. ASV Reg. Lat. 699, fols. 264r–265v.

parently received additional information verbally from the proctor. Paul II thus gave the archbishop of Mainz instructions to investigate the case, to separate the couple for a certain time, and to impose a penance on them for the clandestine marriage. The fees for the papal documents were paid in Rome on September 17, 1470. In addition, however, a considerable fine was also imposed, a *compositio*. This payment in the amount of 30 camera florins was made ten days later through Friedrich Rorich, a cleric of Mainz and former *familiaris* of Pope Pius II. Rorich possessed numerous sinecures in and around Mainz and travelled occasionally back home because of his benefices.³⁷ Perhaps he also served Peter and Katharina as proctor to help them secure the pardon.

Besides the erroneously duplicated supplications and the *reformationes*, other factors also led to a double entry, as we will see. These consisted of the heavily formalized legal procedures in marital affairs before the officialate courts *in partibus* and the practice of granting pardons through the penitentiary, which relied in the same way largely on proven formulas well known to the proctors. Under certain circumstances a married couple was compelled to turn more than once to Rome to the papal pardon office. Only through the Roman supplication register do we have notices of these proceedings at all. In concluding this section, let's look again more precisely at one example of these types of administrative workings in the conferral of a marriage dispensation. In three lines under the date November 21, 1486, the register scribe had noted for the Würzburg couple Johannes Lutz and Agnes Müllerin a dispensation for the fourth degree of consanguinity—short and sweet.³⁸ The *littera* issued about it, however, contained much more, as is to be perceived from the second supplication of the same couple from April 6, 1489.³⁹ The archdeacon of Heilbronn, to whom the office of a *vicarius in spiritualibus* for the bishop of Würzburg in the imperial city on the Neckar devolved, had separated the couple because of the too-close consanguinity. The two did not obey, however, but lived together in marriage and had children

37. On Rorich, cf. RG 8.1260 and 9.1337.

38. RPG 7.432.

39. RPG 7.915.

“because they hoped to get a *littera* from the apostolic see,” as the source states. They received this *littera*, of which we have knowledge only through the above-mentioned supplication, from the penitentiary, yet “the decreed separation from table and bed” made by the archdeacon found “no mention” in the supplication. “The Heilbronn judge therefore refused the granting of the dispensation because of this omission.” For this reason Johannes and Agnes had to turn to Rome for a second time. They received absolution and the permission to be able to marry again “for the sake of their children” (*in favorem prolis*).

Means of Transmission

The answer to each pardon request approved by the pope went out to the petitioner, as we already know, in written form. He who had personally made a pilgrimage to Rome received a *littera ecclesiae*, as already mentioned, from the minor penitentiary of one of the three basilicas of San Pietro, San Giovanni, and Santa Maria Maggiore after confessing his sins. Without mention of the offense (for the seal of confession had to remain intact), the *littera* contained a certification that the sinner had confessed and received absolution from the minor penitentiary. These small notes on parchment issued directly at the basilicas possessed only a minimal chance of surviving in the archive *in partibus*. The pilgrim accepted it, was happy to have taken care of his sins, and, when he had shown the note to his bishop or parish priest (depending on who had sent him off to Rome) back at home, the *cedula* was no doubt thrown into the fire. What is to be found still today in the archives *in partibus* much more frequently is the letter issued by the major penitentiary in his own name. For every pardon request that was granted on the basis of a written supplication, the penitentiary sent out a *littera* to the petitioner, that is, to his ordinary or a commissioner or the proctor. These *litterae* were drawn up according to the formulas customarily used at the curia. If *petentes* who had made a pilgrimage to Rome did not take them themselves, we do not know how these documents reached their addressees. Apparently the petitioner’s Roman proc-

tors were responsible for that. They had to provide their name on the supplication, and it was then also entered on the *littera*.⁴⁰ Two *litterae* are preserved in the archives of Lower Saxony from the major penitentiary, Julianus della Rovere, later Pope Julius II, to the bishops of Hildesheim, that is, Verden, for petitioners whose supplications are recorded in Rome in the register of Innocent VIII. They have to do with two married couples from the urban ruling class of Hildesheim and Lüneburg; the documents were thus preserved in the municipal archives.⁴¹

The papal pardon nevertheless only took effect once the addressee, who was in most cases the bishop, received the *littera*, checked over the facts of the case, and reported the granting of the pardon by the pope through the official to the petitioner in question.⁴² When petitioners did not observe these formalities, they came away empty-handed. This happened with two couples from Krakow in the year 1483.⁴³ In each case, the couple was aware that they were related by blood in the fourth degree; for that reason they concluded the marriage contract without consummating the marriage. Before the nuptial celebration (*sollemnisatio*), they made a request in Rome for a dispensation and received the news that the penitentiary had granted their request in a *littera* directed to the bishop of Krakow. "In their simplicity and in the belief that they received the dispensation through the request alone without the *littera* having reached

40. Göller, *Die päpstliche Poenitentiarie*, 1.1.184.

41. RPG 7.61 (the *littera* is in the episcopal archives of Hildesheim), and RPG 7.141 and 308 (the *littera* is in the main archives of Celle). They are listed in Brigitte Schwarz, *Regesten der in Niedersachsen und Bremen überlieferten Papsturkunden 1198–1503* (Veröffentlichungen der historischen Kommission für Niedersachsen und Bremen 37; Quellen und Untersuchungen zur Geschichte Niedersachsens im Mittelalter 15, Hannover, 1993), n.2137, p. 533, and n.2148, p. 535.

42. Cf. the implementation of the *litterae* of the penitentiary in marriage cases by the vicar general of Constance: REC 9987 from August 23, 1437; REC 10144 from April 1438; REC 10427 from April 12, 1441; REC 11412a from January 18, 1450; REC 11752 from December 13, 1453; REC 12400 from January 20, 1461; REC 12902 from November 15, 1464; REC 12965 from March 19, 1465; REC 13369 from 1468.

43. RPG 6.1921: 1483. A similar case with two supplications is found in RPG 7; the first supplication dates from July 23, 1488 (RPG 7.768), and the second from May 26, 1489 (7.943).

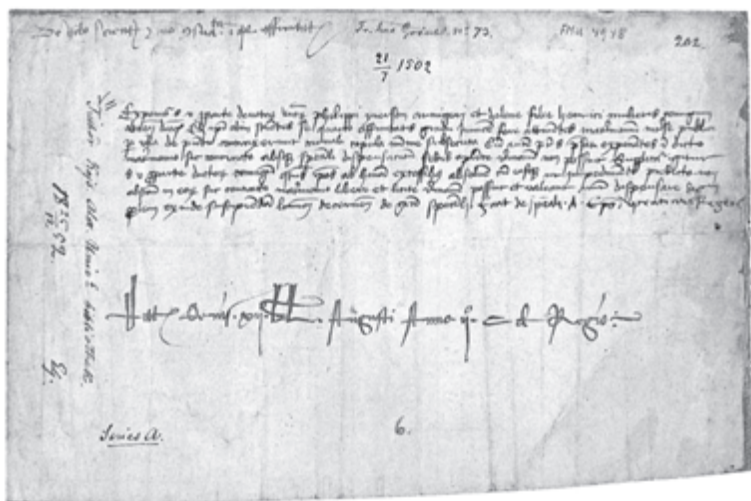


Figure 4. Original supplication for a dispensation from the fourth degree of consanguinity of a Swedish couple from July 21, 1460, which Bishop Conrad Bitz of Turku brought along from Siena. Finland's Medeltidsurkunder No. 4948. Salonen, *The Penitentiary*, p. 258.

the bishop and without him having publicized it or having put it into effect,⁴⁴ they ecclesiastically celebrated and consummated the marriage," as their supplication says. But their assumption was incorrect, as the Krakow official would have told them. So they had to seek the dispensation all over again in Rome. One can at least gather from this case that petitioners simply assumed that their supplication would be approved in Rome!

The instructions of the penitentiary were to be followed in Christendom as if they were the commands of the pope. No one dared contradict them without risking the serious charge of *contemptus clavium*, the contempt of the papal power of the keys. Nevertheless, entirely without contradiction, the instructions of the penitentiary seem not to have been followed everywhere. Pope Sixtus IV felt the need, once with the constitution *Dum contingit interdum* of April 8, 1483 and

44. RPG 6.1921: "litteris eidem ... episcopo minime publicatis vel executis."

then in the bull *Quoniam nonnulli*,⁴⁵ to enjoin all believers to show the same absolute obedience to a *littera* of the penitentiary as a papal bull, upon penalty of excommunication and interdict. Pope Innocent VIII repeated his predecessor's order on January 7, 1492. These warnings demonstrate that contempt of a Roman directive was not a rare occurrence, as also emerges from the supplication of a couple from the bishopric of Liège from the year 1490.⁴⁶ The two had received a *littera declaratoria* from the penitentiary, in which their ordinary, Bishop Louis of Bourbon (1455–82), was ordered to give them a dispensation from the marital impediment of a spiritual relationship. Based on this dispensation, they entered into marriage with the church's blessing. Bishop Louis died on August 30, 1482 during a siege of Liège without carrying out the directives of the *littera* beforehand. Considering the long period of disorder in the episcopal city, which was burned down in 1467, this comes as no surprise. Louis's successor, Bishop Jan de Hoorne, who had risen to the see of Liège at the end of 1483 and could exercise his authority only after long, laborious struggles against co-contenders, "inconvenienced the couple, required that they separate, and declared their children illegitimate." In this way, so their proctor argued, a "great scandal" arose, "since the two had been living together as a married couple in exemplary fashion for more than nine years." Ultimately such impertinence (*temeritas*) of the bishop toward the apostolic see could not be tolerated. The *petentes* thus asked the pope to instruct Bishop Jan or another prelate in written form and under threat of the usual punishment to heed the first *littera* and not to trouble them in their marriage any more.

The Definitive Decision Was Left to the Local Judge

After these analyses of the "technical" side of our sources, the question arises how the historian should handle the supplications recorded in the registers of the penitentiary and chancery. Is the information contained in them at all credible, or, put another way, did the

45. *Bullarium Romanum* 5, 292. Göller, *Die päpstliche Poenitentiarie*, 2.1.29 and 2.2.82–85.

46. RPG 7.2149.

petitioners always tell the truth? Are their declarations not instead biased accounts (to use juristic jargon) in which the request at hand is portrayed in the most beneficial way possible for the petitioner? A refined answer must be given to this question. On the one hand, the supplications are documents of “period witnesses” (*Zeitzeugen*) with statements about the individuals’ life situation (ego-documents). At least at our current state of research, nothing more is known of more than 90 percent of these people. The Roman penitentiary did not know in any thorough way the circumstances of the lives of the respective couples making supplications in the distant German empire. It logically follows that a person in Rome was therefore not in the position to verify the substance of the facts of the case set before him in the supplications. The curia’s expert examiner was restricted to the formal juristic controls of the request for pardon.⁴⁷ Above all, the firm principle of *veritas precum*, based on a decretal of Pope Innocent III (1198–1216), held. This principle stated that incorrect statements by a petitioner made the potentially granted pardon invalid.⁴⁸ For this reason, the curia referred every request for pardon back to a court of jurisdiction in its home diocese (*in partibus*). Only a few petitioners, as we have seen, personally set out on the onerous journey over the Alps to the Tiber. Most supplications reached the papal pardon office “by post.” After the penitentiary (and in difficult cases also the auditor) checked over the request submitted by the proctor, the *littera* went via the proctor to the local bishop with the commission (*commissio*) to pronounce the definitive granting of pardon after investigating the facts of the case.

If a commission was forwarded to an ecclesiastical jurisdiction other than that of the ordinary, there was also a canonical reason for that. Various ecclesiastics in the diocese of the petitioner could be named as judges commissioned by Rome in place of the local bishop. As a rule this happened at the wish of the person making the proposal, that is, through his proctor, but it likewise was regulated by

47. On this point, cf. Ernst Pitz, *Supplikensignatur und Briefexpedition an der römischen Kurie im Pontifikat Papst Calixts III.* (Bibliothek des DHI in Rom 42, Tübingen 1972).

48. X 4.14.6: “Non valet dispensatio . . . si ibi causa falsa sit expressa.”

the logic of the process itself. The request of a merchant from Cologne but living in Venice, a certain Gerardus de Erne, who sought an absolution for his divorce from a Venetian woman in 1474, was assigned to the curia of the patriarch of the floating city, not to the archbishop of Cologne.⁴⁹ The Cologne merchant was called before the spiritual court of the most serene city and did not have to undertake the long journey to his home diocese. For one thing, canonical procedural law forbade this; for another, there was also the fact that his former wife came from Venice and both lived there.

Kunigunda Erasmii and Georg von Neseltal, who had been involved in a relationship with each other when both lived in the bishopric of Regensburg, met again later in Rome. Georg, a baker from Landshut in Bavaria, was already active since at least 1480 in the bread business in Rome and had married the maiden Lucrezia, the daughter of another German baker, at a notary's in 1480. Lucrezia's father had brought 1000 ducats as marriage portion and dowry into the marriage for Georg.⁵⁰ For what reason did Kunigunda submit a supplication in the year 1484, wanting to have attested that she was not bound in marriage to Georg, who had in the meantime married another woman (precisely the aforementioned Lucrezia)? Given the lack of other sources one can only speculate. In all probability some envious persons in the eternal city heard of Georg's affair with Kunigunda, who likewise now lived in Rome, and attacked his newfound marital happiness before the court of the vicar of the city. The initiative seems to have been taken up by Georg, who requested that the matter not be assigned to the representative of the pope, who was actually responsible for the petitioner, because Georg felt that he was prejudiced in this case, but rather that it be assigned to the bishop of Ferrara, the Franciscan Bartolomeo della Rovere, a relative of Pope Sixtus IV who was staying at the curia and was apparently well-disposed toward Georg.

49. Erne was a well-known merchant from Cologne; his supplication is RPG 6.494.

50. RPG 7.2446. Knut Schulz and Christiane Schuchard, *Handwerker deutscher Herkunft und ihre Bruderschaften im Rom der Renaissance* (Römische Quartalsschrift für christliche Altertumskunde und Kirchengeschichte 57, Supplementband, Rome, 2005), NU Nr. 71, 75, and 76, pp. 358, 360.

When on the other hand the supplication of a couple from Cologne was transferred by the penitentiary not to their ordinary but to the bishop of Münster, it had to be for a special reason.⁵¹ At the time of this supplication, as one knew in Rome, the archbishop of Cologne was excommunicated. In the course of the so-called *Stiftsfehde* (donation feud) of Cologne, Rome had inflicted ecclesiastical punishment on Archbishop Ruprecht von der Pfalz (1463–80) at the instigation of his cathedral chapter.⁵² Since the papal curia naturally could not have contact with an excommunicated prelate, the commission did not go to the bishop of Cologne but to the suffragan bishop in Münster. And since the curia of Bishop Ruprecht had not officiated in Cologne since 1474 but rather in Rheinberg until the summer of 1480,⁵³ supplications were not commissioned to Ruprecht in November 1478 and again in May 1480 but rather to the Dominican Heinrich von Rübenach, who from 1469 until 1493 was suffragan bishop in Cologne and titular bishop Venecompensis.⁵⁴ It was in this function that three supplications from Cologne were transferred to him.⁵⁵ When Ruprecht was held by his opponents in prison from 1478 to 1480, Henry exercised the spiritual administration of the diocese. The confused situation in Cologne during the feud is reflected in the commission of this supplication. As another example, the provost of the Church of the Holy Spirit in Roermond was handed the commission of a supplication from June 28, 1480 for a marriage dispensation of a woman from Cologne solely at her request.⁵⁶ Ruprecht died three weeks later, and the history of the bishopric flowed again into calmer waters.

51. RPG 6.960 (May 2, 1477).

52. Wilhelm Janssen, *Das Erzbistum Köln im späten Mittelalter 1191–1515*, 2 vols. (Cologne, 1995), 2.1.277ff.

53. *Ibid.*, 2.1.283.

54. *Translator's Note*: The current place name indicated by the adjective Venecompensis (alt. Vicecompensis) is unknown. The city probably is located in eastern Europe in a region that had been Christian but by the fifteenth century lay in pagan (in this case Turkish) hands. For a list of the known titular bishops of this see, including Heinrich von Rübenach, cf. Conrad Eubel, ed., *Hierarchia catholica medii aevi*, 4 vols. (Münster, 1914), 2.264.

55. RPG 6.1238, 1459, and 1460.

56. RPG 6.1478.

On occasion there was good reason for a *petens* to have a *littera* executed not by his local bishop but by another ecclesiastic. This always happened when the relevant episcopal see was vacant, as in Utrecht in 1456, where David of Burgundy (1455–96) had not yet established himself in his new office, and the commission therefore went to the suffragan bishop Judokus Borre.⁵⁷ Or this happened when the bishop was not in residence, as was the case for a couple from Mainz in 1482, when the *littera* said “that their ordinary was absent.” An objective reason covered by canon law consisted in the distance of the home of the petitioner to the seat of the bishop. We thus read in a supplication of the year 1466 that the *littera* was to be sent to the abbot of a Praemonstratensian monastery in Magdeburg “because the *petentes* lived a four-day’s journey away from their bishop.”⁵⁸ A young couple from the east Friesan part of the bishopric of Münster received a *littera* via the Cistercian abbot of Scoladei in the bishopric of Bremen. In the vast diocese of Mainz, the requests were often transferred to Erfurt or Aschaffenburg. There are many other such commissions on the grounds that the petitioners lived too far from the main diocesan seat.

In other cases it was claimed in the commission that the bishop did not have jurisdiction over the suppliant. The provost of the collegiate church of Hamburg, not the archbishop of Bremen, received the *littera* of a couple from Hamburg “because he possessed the ordinary jurisdiction over the suppliants in spiritual matters.”⁵⁹ Konrad ab dem Veld and Ursula from Freising also did not stand under the bishop there but under the official of the cathedral chapter, “who is the ordinary judge of their parish church.” Therefore the commission of their *littera* was issued to him.⁶⁰ Another, certainly subjective, reason for the deviation from the norm resulted from the suppliants claiming that the ordinary executor (in most cases their bishop) was biased, as is said in not a few supplications.⁶¹ The rejection of a judge

57. RPG 3.1769.

58. RGP 5.208.

59. RPG 6.1745 (year 1482).

60. RPG 7.919.

61. RPG 5.732: “cum habent ordinarium in hac parte suspectum.” Judicial bias also appears as an argument in many other supplications, such as RPG 3.1923 (Utrecht in the year 1456); 6.2022 (Utrecht, 1471); 7.47 (Mainz, 1490).

because of bias was guaranteed in canon law.⁶² In marital matters in which the petitioners came from two different dioceses, the commissions were given in each case to only one ordinary.⁶³

A Roman prelate or member of the curia was commissioned with the investigation of the request for pardon only when the petitioners were present in Rome. This fact emerges very clearly from the commission note of a supplication for dispensation for a couple from Würzburg, which reads, "The supplication may be transferred to a prelate in the Roman curia because the petitioners are present and claim to have the necessary pieces of evidence with them."⁶⁴ In each case in which a commission was made outside the norm (that is, when it was not issued to the local bishop of the suppliant), one should suspect that something unusual might lie behind it. Why in the world did a request from the year 1487 for the grace to absolve the count of Leiningen and Dagsburg and his noble concubine (whom he kept while she was still married) and to allow them to marry not go to the bishop of Strasburg? Why was it instead commissioned to the provost, Cristoph von Utenhan, of St. Thomas in the city of Strasburg?⁶⁵ In this case, only a closer examination of the existing personal or household relationships might be able to bring clarification.

The commission tasks decreed from Rome increase sharply from the time of Pope Sixtus IV. There were exactly 22 between 1455 and 1470, 56 in the following decade, and then a full 163 up to 1492. In the holy year 1500 the penitentiary commissioned 26 marriage dispensations. In terms of the number of instances of commissions, Constance and Mainz (33 each), and then Utrecht (27), Cologne (19), and Salzburg and Freising (11 each) stand out among the bishoprics. Additional costs were also connected with this additional administrative procedure for the supplicants, which were incurred back at home. If commissions increased at courts of instance other

62. Ludwig Schmugge, "Kanonistik in der Pönitentie," in *Stagnation oder Fortbildung? Aspekte des allgemeinen Kirchenrechts im 14. und 15. Jahrhundert*, ed. Martin Bertram (Bibliothek des DHI in Rom 108; Tübingen, 2005), 105.

63. RPG 6.1936 (year 1484).

64. ASV PA 44, f. 208v (year 1495).

65. RPG 7.588.

than the ordinary under Innocent VIII and especially under Alexander VI, the reason could also certainly be that the *petentes* sought to influence the decision in their favor through the incorporation of judges delegate favorably inclined to them.

Instructions of the Penitentiary: Prohibition of Intercourse; Fines

In some cases the penitentiary combined instructions with the granting of a pardon. With several marriage dispensations of the time of Pius II (1458–64), in cases of a deliberate failure to heed the impediment of a spiritual relationship, these instructions consisted of the prohibition to sleep together as a married couple. The prohibition was temporally delimited to one to four months.⁶⁶ This practice was occasionally still carried out at the beginning of the pontificate of Paul II (1464–71),⁶⁷ but after 1465 such a punishment does not occur any more in the decisions of the office. Another instruction, this of a financial nature, consisted of the composition (*compositio*), a fine, to be paid to the papal datary. If the penitentiary ordered a *compositio*, the *littera* was not allowed to go out before the datary, the custodian of the papal privy purse, had confirmed receipt of the money. More will be said in the section on costs about the extent, frequency, and amount of the compositions. Already from the time of Alexander V (1409–10) a composition was ordered for couples who had knowingly married in a forbidden degree of consanguinity. This was done as a punishment for the deliberate transgression of a prohibition, “as penance for an offense committed.”⁶⁸ The decretal of Pope Clement V (1305–14, Clementine 4.1.1) confirmed by the Council of Vienne very possibly provided the impetus for these types of instructions. In addition to excommunication, the decretal speaks of the possibility of “additional penalties” (*alias poenas*) for marriages knowingly contracted within forbidden degrees. In the period of our investigation, the curia decreed a composition payment to the datary in 824 of the 6,387 supplications.

66. Cf. RPG 4, Index verborum s. v. *separare*.

67. RPG 5.34–35, 156 (3 months).

68. Göller, *Die päpstliche Poenitentiarie*, 1.1.114; 2.1.184ff.; 2.1.185.

Besides the direct instructions, the penitentiary used additional clauses from which certain obligations for the petitioners arose. In an uncanonical marriage, one contracted in secret, for instance, or in the existence of an impediment, the penitentiary inflicted various punishments that were not mentioned in the registered version of the supplication. A frequently used clause contained the prohibition to contract another marriage after the death of the present partner. Instructions of this kind almost always occurred in cases of requests for dispensations in which a couple wanted to cleanse their relationship after an adulterous affair. Occasionally they appear in other supplications in which a couple (often for the second time) sought a papal pardon to keep a partner or to marry for a second time.

As an example of this, we may refer to supplications from the bishopric of Sion in the Swiss canton of Valais.⁶⁹ In the first case, a woman had been granted dispensation from a marriage impediment by the major penitentiary. This concerned her first marriage. The *littera* delivered by the bishop of Sion contained the instruction that she must remain unmarried after her husband's death. In actuality the widow did marry again and proceeded to entreat the legitimization of her second marriage from the penitentiary.

In the second case, Marchisia and Johannes Egge lived as parishioners of St. Stephen's Church, which at the time had just taken its new Gothic form, in the "strong," that is, well-fortified, town of Leuk in Valais in the bishopric of Sion. In the days of Bishop Walter II Supersaxo of Sion (1457–82), they had gotten married in every sense of the word and produced offspring before 1469, knowing that they were related in the fourth degree of consanguinity. Their request for absolution from automatic excommunication, into which they fell through their deliberate offense, and for dispensation was approved by the major penitentiary in the penitentiary register of Paul II with the date of March 19, 1469. Nevertheless, because of their deliberate transgression of the law, the penitentiary imposed a *compositio* payment on the two. Thirteen years later, on April 21, 1482, their names appear anew in the register of the Roman pardon office. At this point, Marchisia was married to Raymund Amstein and no lon-

69. RPG 3.1736, 1455; 5.651; 6.1775 as well as 6.1624 and 1879.

ger to Johannes Egge, who had apparently passed away. Why did she make her way to Rome again? The petitioners mentioned the original couple's supplication for dispensation from the fourth degree of consanguinity, and they then referred to the *littera* issued to them by the penitentiary, which may still turn up in the Sion archives. The major penitentiary had indeed granted them dispensation in that letter but nevertheless laid down conditions that necessarily resulted from the stringent process of registration of the supplication. Marchisia and Johannes were supposed to live apart for a while and then could formally contract their marriage again, but this was so with the proviso "that neither of the two partners may marry again after the death of the other." Marchisia had not paid attention to this instruction after Johannes's death but had wedded Raymund "in the opinion that there was no impediment and it was permitted her," as her supplication states. Because she must have recognized that this was not the case without another dispensation from the apostolic see, the two then sought after this pardon in Rome, which was also granted to them.

Angela de Toerne and Arnold Jegher from the diocese of Utrecht are the protagonists of our third example. Prior to the year 1480, fully aware that they were related to one another in the third (Angela later said even the second) degree, they had married *per verba de praesenti*, and this secretly, and consummated the marriage. On November 27, 1480 they received papal absolution from automatic excommunication, were allowed to remain in their marriage, but had to pay a *compositio*. A good two years later, on April 11, 1483, we find the name of Angela once more in the penitentiary's register. Arnold had in the meantime departed this life, Angela wanted to enter again into the state of marriage, but the proviso of a prohibition against marrying again had been written in the original *littera*. Nevertheless the regent allowed her a second marriage.

The above-mentioned proviso with the prohibition against marrying again (according to the formula *clausula, quod supervivens perpetue remaneret innuptus* or *absque spe coniugii*) and the other mentioned instructions are also interesting from the point of view of the functioning of the papal administration and even the genre of our sources,

the penitentiary supplications. According to information of a list of *taxae* (the ordinary fees of the papal curia) dated only as being from the time of Clement VII (1523–34), the penitentiary always inserted this condition in cases in which the couple had married in the knowledge of consanguinity. The derogation of the proviso, according to this list, cost thirty-six *grossi*, or more than three-and-a-half florins.⁷⁰ Since the petitioners as a rule claimed in a second supplication that these instructions had been contained in an earlier *littera* issued by the penitentiary, the volumes of the *Repertorium* published so far allow in many of these cases the consideration of circumstances surrounding the first conferral of pardon, which can be shown with a few examples.⁷¹

Jacob from the diocese of Strasburg had received papal approval in 1478 to marry Eda, a widow from Jungenheim in Alsace, despite his relationship by marriage to Eda's first husband, Bartholomew (an impediment of the type "public decorum"). After almost fourteen years we find Jacob in the penitentiary's register once again.⁷² On August 15, 1492, at the very beginning of the pontificate of Alexander VI, the pope second in succession after the pope during the original case, Jacob reported that his Eda had died. We find out from his second supplication, moreover, that the penitentiary had placed conditions on them in 1478 in the *littera* that is unknown to us. Since they had knowingly transgressed canon law, they had to be separated from table and bed, for a period fixed by the Strasburg official. Additionally, neither one could ever marry again. Then in 1492 Jacob claimed "still to be of an age in which he could not live contently and would like to become a father." Apparently he and Eda had not had any children. For this reason he had a burning desire to marry again, which he could not do without approval from the apostolic see, who graciously granted him the second marriage.

Hubert of Tresfolen from the bishopric of Utrecht found him-

70. Göller, *Die päpstliche Poenitentiarie*, 2.2.176. Cf. also Göller, "Walter Murner," 193.

71. RPG 6.388 (year 1474) and 584 (year 1475).

72. The first case is RPG 6.1206, and the second may be found in ASV PA 42, fols.147r–148v.

self in a comparable situation. He had once been joined in marriage to Adriana Jacobi, even though it had been clear to both that they were related in the third degree. Because they had for this reason been taken to court by the official, they applied for a dispensation in Rome. The registered supplication falls in the pontificate of Pope Sixtus IV, bears the date of February 26, 1484, and states that the marriage was expressly granted to the two and that they had paid a *compositio*.⁷³ There is no mention in the registered version of the absolution from the excommunication resulting from the clandestine marriage, the instructions of a temporary separation from table and bed before contracting the marriage anew, or the condition that the surviving partner could not marry again. We gather these circumstances only from the second supplication, which Hubert (who was called Humbert of Therselen in the first supplication but was undoubtedly the same man) directed to Pope Innocent VIII on June 14, 1485.⁷⁴ Adriana had since died, and he explained that he wanted to marry again. But since the papal prohibition of the *littera* from 1484 against Hubert marrying a second time stood firm, he did not now ask simply for a dispensation in the way common in earlier supplications, but rather, in a way analogous to the formulas of other letters of pardon in other pious works, for the commutation of the marriage prohibition. Henry Naeltwyck from the bishopric of Utrecht also proposed the same thing in a supplication signed in 1496. An earlier *littera* had likewise imposed on him a proviso in which he was prohibited from marrying again.⁷⁵

Second-Hand Pardons: Councils, Legates, Bishops, and Collectors

At the papal curia, the penitentiary possessed a near monopoly on the granting of marriage dispensations. Did the papal dispensations,

73. RPG 6.1942.

74. RPG 7.162.

75. On this clause that the surviving partner could not re-marry, cf. Göller, "Walter Murner," 195. ASV PA 45 fol. 327r. Other supplications in which the clause *Supervivens* occurs can readily be found in the registers under Pope Calixtus III (RPG 3.1736) and Paul II (RPG 5.47, 433, and 758).

absolutions, indulgences, and declarations have to be received exclusively in Rome? On the basis of the pope's fullness of power (*plenitudo potestatis*), the successor of Peter could also delegate to other persons and institutions the power to execute rights reserved for him alone, and he did indeed do this. One should mention in the first place here the council. Instead of the Roman penitentiary, the Council of Basel (1431–49) was repeatedly called on as a court of appeal with regard to, for instance, the archiepiscopal court of Mainz.⁷⁶ In the conciliar city in the Rhineland, there also existed a penitentiary in the schismatic period after 1439, which like its curial twin similarly distributed marriage dispensations. The major penitentiary of Basel, Nicolas Panormitanus, delivered a *littera* on July 31, 1443, in which he commissioned the bishop of Basel to issue a dispensation to Henry Strobel and Anna Enderlin from the diocese of Constance, who had married without realizing that they were related in the second and third degree. The dispensation was to allow them to remain in their marriage and to celebrate it with the *solempnisatio*. The text of the letter of pardon corresponds to the form also common in Rome.⁷⁷ A decision of the schismatic council was heeded in Constance as late as 1446.⁷⁸ Traces of the granting of pardons by the conciliar penitentiary of Basel can also be found in supplications of the Roman penitentiary.

In the second place, we should mention the papal legates and *nuntii*, who visited the area of the German empire on various missions in the second half of the fifteenth century equipped with varying jurisdictional authority. During their trips undertaken on behalf of the apostolic see, they had a sort of delegated papal power at their disposal. The pope was accustomed to describe his most important legates, the *legati a latere*, as his *alter ego* and to equip them with numerous powers, namely the right to issue pardons and prebends as the pope himself. Each legation could have distributed a mass of "hundreds, even thousands of dispensations and absolutions."⁷⁹ Thanks

76. Cf. REC 9927 from May 9, 1437; REC 10427 from April 12, 1441.

77. *Urkundenbuch der Abtei Sankt Gallen*, part 6 (1442–1463), n.4506; REC 10784.

78. REC 11105.

79. Erich Meuthen, "Die deutsche Legationsreise des Nikolaus von Kues

to the income obtained from these measures, at the very least they served to cover the high costs of a legation, at least in part. These powers also included the conferring of marriage dispensations, as a rule a certain number and restricted to simple cases. The entourage of papal *nuntii* and *legati* stood at a few dozen clerics who received the task of, among other things, issuing pardons provided for in their powers and keeping a record about them.⁸⁰

The extent of these legatine powers varied. In 1446, when Pope Eugenius IV sent four prelates (the bishops John of Liège and Thomas of Bologna and the camera auditors John of Carvajal and Nicolas of Cusa) to Germany as orators, they received among other *facultates* the right "to absolve from excommunication twenty spouses related in the third or fourth degree who had contracted their marriages in full awareness of their situation."⁸¹ For their later legations, now *a latere*, in the years 1447 and 1451/52, respectively, Carvajal and Nicolas of Cusa received thirty dispensations each for marriage impediments of any kind.⁸² The bishop of Camerino, sent as a *nuntius* to Poland in 1448 by Nicolas V, could issue only twelve marriage dispensations, the same as Enea Silvio Piccolomini (the future Pope Pius II), at the time still bishop of Siena, who travelled to Bohemia and Moravia in 1452 as a *nuntius pape*, or Louis Perez, bishop of Silves, who went into Prussia, the territory of the Teutonic Knights, as a papal inquisitor in 1450.⁸³ When Pius II dispatched Cardinal Bessarion to Germany in 1460, he similarly bestowed on him

1451/1452," in *Lebenslehren und Weltentwürfe im Übergang vom Mittelalter zur Neuzeit* (Abhandlungen der Akademie der Wissenschaften in Göttingen, Phil.-Hist. Klasse, 3rd Series 179; Göttingen, 1989), 435.

80. Werner Maleczek, "Die päpstlichen Legaten im 14. und 15. Jahrhundert," in *Gesandtschafts- und Botenwesen im spätmittelalterlichen Europa*, ed. Rainer C. Schwinges and Klaus Wriedt (Vorträge und Forschungen 60; Ostfildern, 2003), 33–86.

81. Meuthen, "Die deutsche Legationsreise," 433. *Translator's Note:* Meuthen's biography of Nicolas of Cusa has recently been translated into English: Erich Meuthen, *Nicholas of Cusa: A Sketch for a Biography*, trans. from 7th German edition with introduction by David Crowner and Gerald Christianson (Washington DC, 2010).

82. *Ibid.*, 434; RG 6.2678 and 4407.

83. RG 6.391, 1131, and 4054.

among numerous powers the right to absolve on this trip thirty married couples from the impediment of the third and fourth degree of consanguinity.⁸⁴ In 1459, for his legation as *nuntius* to Poland, Silesia, and the Teutonic Knights, Archbishop Jerome of Crete received an allowance of twenty-five dispensations, and only from the fourth degree, while the Cardinal of S. Angelo, John Carvajal, for his legation in the same year was entitled to only ten dispensations in the fourth degree. When Rudolph von Rüdeshheim, at the time bishop of Lavant, received a mission in 1463 as a *nuntius pape* in order to arbitrate disputes, he could issue twenty marriage dispensations in the fourth degree.⁸⁵ On February 18, 1471, Paul II commissioned Francesco Todeschini Piccolomini, cardinal deacon of Sant'Eustachio, as *legatus a latere* for the German empire. Francesco departed from Rome a month later in order to make his way to Regensburg to the Imperial Diet. Besides other powers, he received the right to dispense fifteen couples from the marriage impediment of consanguinity in the third and fourth degree. Four years earlier, Laurentius Roverella, bishop of Ferrara (1460–74), was sent to Germany as *nuntius et orator cum potestate legati* because of the Hussite Wars.⁸⁶ These are a mere sampling of the extensive allocation of the powers of dispensation and absolution to papal legates.

Unfortunately, however, the marriage dispensations bestowed by the legates hardly ever leave a trace, because the registers of travelling legates possessed little luck for being transmitted in archives; with very few exceptions, they are lost. Fragments of a register devoted to a trip of a legate exist in the bookcases of the Vatican Secret Archives only in the case of the legation of Cardinal Bessarion in the year 1460. These fragments show that, between the first and tenth of March, 1460, he had approved seven marriage dispensations in Nurnberg, among them one for Count Ulrich of Württemberg and Margarethe of Savoyen. The original legatine document for the Swabian count, written in neat, late Gothic miniscule, still exists today in the main state archives in Stuttgart.⁸⁷ An additional dis-

84. RG 8.513.

85. RG 8.2198 and 5156.

86. RG 9.1265 and 4122.

87. Original is in Hauptstaatsarchiv Stuttgart A 602 Nr. 246. Count Ulrich had

pensation went for a clandestinely contracted union with *paternitas directa*.⁸⁸ Three additional letters of pardon were issued in Vienna.⁸⁹ In view of the gaping holes in the transmission of these documents, the occasional references to dispensations by legates in the penitentiary's register are all the more important. In a supplication of the year 1488, a couple from Osnabrück reported through Raymundus Peraudi, who "was active as the *nuntius* of the apostolic see in those regions and held the power for making dispensations," that they had received permission to contract a marriage despite a spiritual kinship between them. Raymundus Peraudi, who bears the title "doctor of theology" in the supplication and *archidiaconus Alvisiensis ecclesie Xantonensis* (a title that the petitioner could only have taken from the *littera* issued by him but which today is lost), had stayed at the court of Emperor Frederick III in 1486.⁹⁰

A supplication registered in Rome in 1486 reports that a certain Regula Schmidin from Chur, after her wedding with Petrus Vimerdergii, found out that he was already married to another woman. As a result, she turned to the legate staying in her bishopric at that time. Given the year, one can presume that the legate in question was the already mentioned Raymundus Peraudi. Regula received a *littera* addressed to the bishop of Chur.⁹¹ He should have Petrus summoned to court and clarify whether something was known about this earlier marriage. Apparently Petrus did not appear at his appointment in Chur, and Regula thus turned again, this time to the pope in Rome, with the request that her marriage with him be confirmed as invalid.

Considering the widespread desire throughout the population to obtain papal absolutions and dispensations whenever possible in their countries without great financial expenditure, swindlers seem to have had an easy game to play. Although they were not in any way papal legates, some clerics made their way around Christendom and claimed to have received from the pope the right to bestow par-

already been granted permission on December 12, 1459 by the papal chancery: RG 8.5700. REC 12318.

88. Records of the dispensations are in RG 8.1404, 1862, 2329, 3248, 4912, 5219, and 5750. On these, cf. also Wild, "An schuoler und an pfaffen," 101–5.

89. RG 8.697, 1431, and 4599.

90. RPG 7.849.

91. RPG 7.2506.

dons—and, naturally, in marital matters as well. Johannes and Lucia from the patriarchate of Aquileia appear to have fallen in with just such a conman. In a supplication to the penitentiary, they stated that they had had a suitable *littera* issued, trusting in the claim of a cleric that he possessed the right to dispense from the impediment of consanguinity in the fourth degree. This certainly took place for a handsome fee, because they did not then have to travel to Rome. But then they experienced doubt as to whether it had not been a fraudulent affair, and they later turned themselves to the genuine, Roman well of grace.⁹²

The right to make dispensations in marital matters was in sum no monopoly restricted to the curia. The delegating of the full power of papal dispensation to other institutions of the church, even beneath the level of legates, was not ruled out and was indeed practiced. Whether Peter von Schaumberg, bishop of Augsburg (1424–69), whom Pope Eugenius IV had raised to the cardinalate in 1439, would have received from Nicolas V the right to make dispensations for forty couples in his bishopric and an additional twenty from surrounding dioceses without the red hat is doubtful.⁹³ In 1451/52, in order not to interfere with the cardinal's business and run into the distinct possibility of competing with his right of dispensation, Nicolas of Cusa had "scrupulously cut the diocese of Augsburg out of his legatine journey."⁹⁴ Henry IV von Hewen, bishop of Chur (1491–1509), in 1494 likewise received in Rome the right to make dispensations in cases of consanguinity in the third and fourth degree. The example of Chur demonstrates once more that the *facultas* for marital dispensation was also conferred on bishops.⁹⁵

Besides legates and bishops, a papal collector himself could secure the right to confer marital dispensations. In 1451, the collector appointed by Rome for the Kingdom of Poland and the ecclesiastical

92. RPG 5.183 (year 1465).

93. RG 6.4922.

94. Meuthen, "Die deutsche Legationsreise," 441.

95. The text is in Oskar Vasella, *Untersuchungen über die Bildungsverhältnisse im Bistum Chur mit besonderer Berücksichtigung des Klerus: Vom Ausgang des 13. Jahrhunderts bis um 1530* (62nd Jahresbericht der Historisch-Antiquarischen Gesellschaft von Graubünden; Chur, 1932), 183–84.

province of Gniezno, Nicolas Spiczmiri, besides a series of other powers, received from Pope Nicolas V the right to grant dispensations for twelve couples in the third and fourth degree of consanguinity.⁹⁶ A bull of Paul II mentions a *facultas* for collectors in relation to marriage dispensations in England.⁹⁷ The Vatican series of registers *Diversa Cameralia* from the years 1389–91 already shows that collectors were occupied with affairs of the penitentiary. The volume contains several entries with the description *commissio super voto* or *commutatio voti*. They concern the payment of a sum of money in the place of carrying out a pilgrimage, that is, the commutation of a vow that could not be fulfilled. Moreover, the collectors received commissions in connection with the issuing of marriage dispensations and the determination and collection of the monetary amounts due because of a *compositio*. As late as 1515 a *nuntius* and collector in the kingdom of Portugal collected payments for a marital dispensation; in this case it must remain unanswered whether he did this on behalf of the penitentiary or by virtue of a full power of dispensation delegated to himself personally. Based on what has been said, one can gather that the marriage dispensations recorded in the register of the penitentiary in no way encompass all instances of the papal granting of pardons of this kind.

Is Grace for Sale? Costs of a Marriage Process

The church cannot and may not sell grace; otherwise it becomes guilty of simony. Nevertheless, absolutions, dispensations, and indulgences were not to be had for free; sometimes they cost even significant sums of money. Is there a contradiction here? Did not the Reformers of the sixteenth century have it right when they claimed that the pope bartered away grace? Before we can answer this question, which has been hotly debated in the past, in relation to marriage dispensations, we must first distinguish in the costs for a dispensation between the fees for the *littera* and the *compositio*. The

96. RG 6.4591. On Nicolas Spiczmiri, cf. Christiane Schuchard, *Die päpstlichen Kollektoren im späten Mittelalter* (Bibliothek des DHI in Rom 91; Tübingen, 2000), 302ff.

97. ASV Reg. Vat. 540 fols. 42rss.

latter were fines, which were always inflicted for an offense like simony. Certainly from the time of Calixtus III on, the compositions were a special source of income for the head of the church, for they were henceforth no longer to be paid to the camera but rather to the datary, a person trusted by Peter's successor who headed the papal privy purse. Under Pius II, almost half the papal budget could be met by the compositions. In contrast, the fees for the *littera* were supposed to cover the technical costs to issue, seal, and send off (*expeditio*) the *littera* and were supposed to be for the benefit of the curial servants (scribes and seal-makers) occupied with these tasks.⁹⁸

It is only for these fees that we possess normative sources, the so-called *taxa* lists, which have been transmitted in large number since Pope Benedict XII (1335–42). Since around 1460 they also exist in printed form and were published in Rome at, among other places, the German printer Bartholomeus Guldinbeck. Setting the value of the fees in the second half of the fifteenth century side-by-side in a table with those from the time of Benedict XII,⁹⁹ one cannot determine any significant rise in costs for marriage dispensations, but the number of fees had increased in such a way that, in the later period, individual parts of the pardon package were assigned costs, whereas Benedict XII had designated only a single comprehensive *taxa*. Although, according to the view of older research, the *taxa* classification of Pope Benedict remained in force for almost 150 years and was superseded through a new classification of fees only under Sixtus IV, when all curial offices were being sold, in fact the fees for a *littera* of the penitentiary already before Sixtus IV had clearly stood out against those of the time of Benedict. The trick consisted above all in the introduction of new “criteria for significant payments” in dispensations as well as in the division of *taxae* for the scribes, proctors, register, and seals. The growing number of additional declaratory letters

98. *Translator's Note*: As an introduction in English to the ordinary fees or *taxae* of the papal penitentiary, cf. Wolfgang P. Müller, “The Price of Papal Pardon: New Fifteenth-Century Evidence,” in *Päpste, Pilger, Pönitentiare: Festschrift für Ludwig Schmutge zum 65. Geburtstag*, ed. Andreas Meyer, Constanze Rendtel, and Maria Wittmer-Butsch (Tübingen: Max Niermeyer, 2004), 457–81.

99. See Appendix, Table A1.

(see above) in cases of the varying degrees of consanguinity, which were hit with fees of eighteen to twenty *grossi* tournois, enter into this context. In the incunabula stemming from the first years of the pontificate of Sixtus IV but reflecting conditions around 1455, ten pennies tournois are valued at one ducat.¹⁰⁰

Not every supplicant, however, who turned to Rome had to pay fees. Poor petitioners, that is, those who were prepared to make a sworn oath about their poverty (which did not necessarily mean absolute poverty but could also mean a temporary inability to pay), received the *littera* for free. This information can also be gathered from the marriage dispensations registered in Rome. In the few cases in which the Holy Father was personally occupied with a supplication, he liked to show himself as the friend of the poor. One supplication of the year 1456 says “gratis at the command of the pope,” and a year later Calixtus III let a letter for a couple from Eichstätt pass through the penitentiary without fees, because of their poverty.¹⁰¹ Pius II, who, more frequently than all other popes, was accustomed to sign pardon requests personally, decided in 1459 that the *littera* to be issued for a couple from Würzburg should proceed gratis “because of their poverty;” he ordered this same thing four years later for a couple from Duren.¹⁰² Subsequent popes engaged in this charitableness toward poor petitioners less often; Paul II never gave German suppliants a free *littera*, Innocent VIII only once.¹⁰³ Pope Sixtus IV decreed that a *littera* be issued for free “in view of the great poverty of the couple” in the year 1473 for a couple from Constance and in the year 1478 for a pair from Bamberg.¹⁰⁴ Even if a *littera* had to be written again because of a mistake, the pardon office often charged the recipient nothing more, letting the second letter reach him without cost.¹⁰⁵ Yet these examples of free letters of pardon should not give the wrong impression. *Summa summarum* fewer than one-tenth of one percent of all the supplications investigated here were dispatched for free.

100. On this section, cf. Göller, *Die päpstliche Poenitentiarie* 2.1.132–89; on the other hand, Müller, “Gebühren,” 191ff., quotation on 210.

101. RPG 3.1829 and 1972.

102. RPG 4.180 and 697.

103. RPG 7.641.

104. RPG 6.373 and 1121.

105. RPG 2.995.

The registered supplications unfortunately do not record the fees assessed for the corresponding *litterae* before the year 1500. A document of 1438 notes in the margin of the registered text that a minor penitentiary had received three *grossi* because he had helped a certain Magdalena Payerin not to have to pay her inheritance to the monastery of Münsterlingen on Lake Constance, to which her father had given her, to leave the monastery and to be able to marry. But such a record represents an exception. This document is in fact not a register entry but rather a full copy of a *littera*.¹⁰⁶ This shows how knowledge of the fees can be gained, namely by studying the *litterae* in the archives.¹⁰⁷ Among the notes of the chancery on these documents, there is always a written note about the fee assessed for issuing the *littera*. Another, more systematic path leads through the already mentioned *taxae* lists, the catalogues of the curia or of private individuals (for example the proctors), in which the costs for the letters of pardon are recorded in tables, but here the difficulty consists in correlating the information in the lists to the individual concrete cases.¹⁰⁸

In which currency did the men and women with homes in the German empire pay fees or compositions for the letters of pardon for marital matters in Rome? The monetary unit in use in the apostolic camera, the office responsible for the finances, was the so-called camera florin, a virtual value, which amounted to ten *grossi* tournois¹⁰⁹ or was calculated at 50 shillings (*solidi*) of twelve pennies (*denarii*) each. Additionally, Italian ducats or florins were used. The ducat common in the city of Rome, which was roughly equivalent to

106. RPG 1.1.

107. Examples may be found in Schwarz, *Regesten*, n.2137= RPG 7.61 and n.2148=RPG 7.308, unfortunately without any statement on the fees.

108. On this point, cf. Schmugge et al., *Supplikenregister*, 51ff., 87; Göller, *Die päpstliche Poenitentiarie*, 2.1.132–89 and 2.2.141–80 as well as, most recently with new insights, Müller, “Gebühren.”

109. *Grossi papales* also are an accounting unit of the lists of Benedict XII; cf. the *taxa* lists in Müller, “Gebühren,” 246, l. 307.

Translator's Note: For help with medieval currency, cf. Peter Spufford with Wendy Wilkinson and Sarah Tolley, *Handbook of Medieval Exchange* (London: Boydell and Brewer, 1986), and Peter Spufford, *Money and Its Use in Medieval Europe* (Cambridge: Cambridge University Press, 1988). Tournois coins were minted in Tours; hence the name.

the camera florin, was divided into seventy-two *bolendini*. The proceeds from benefices were stated in silver marks, whose ratio to the camera florin was calculated at the most as one to four (1:4). An average benefice of four marks of silver thus corresponded to roughly sixteen camera florins.¹¹⁰

In general the fees for the Roman marriage dispensations that arose for the suppliant through a supplication worked on at the chancery were substantially higher than those for a *littera* issued by the penitentiary. On the basis of Benedict XII's list of *taxae*, six *grossi* tournois had to be paid for a dispensation from the fourth degree of consanguinity at the penitentiary, while at the chancery the *littera* cost double that—so twelve *grossi* tournois, in cases of ignorance, and twenty in cases where the couple married while knowing about the impediment. The *taxa* was for the benefit of the scribes of the penitentiary. But what did the proctors earn? According to the list of Benedict XII, they similarly made up to six *grossi* tournois in the case of a *littera declaratoria*.¹¹¹ In the fifteenth century an additional *grossus* had to be paid to the auditor for all supplications signed *de speciali et expresse*, since he had to check over the canonical merits of the case.¹¹² Then yet another penny went for the seal-maker, so that, for a marriage dispensation in the fourth degree of consanguinity, the fees could be as much as twenty-eight pennies, almost three camera florins, a not insignificant sum.

In the second half of the fifteenth century the relatively low *taxae* of the Avignon period adjusted to the new conditions at the Roman curia, although the popes repeatedly demanded that the fees determined under Benedict should not be altered under any circumstances. Most of the curial offices had become something to be bought since the reign of Pius II, even those of the penitentiary. Whoever acquired a curial office such as that of a scribe or proctor wanted to make gains off of his investment. In 1462, the papal chamberlain Johann Werner von Flachslan, by birth from the bishopric of Basel, bought the office of penitentiary scribe for 400 ducats.¹¹³ That was still a reason-

110. Cf. Deeters in RG 6, xliii–xliv.

111. Göller, *Die päpstliche Poenitentiarie*, 2.1.142 n.1.

112. Göller, *Die päpstliche Poenitentiarie*, 2.1.28 and 160.

113. RG 8.3799.

able price, for, according to other sources for the years 1464–65, the price for an office amounted to 600 ducats.¹¹⁴ The man who had acquired such an office wanted to get the highest possible return out of it; the fees for the *litterae* for marriage dispensations consequently rose in the penitentiary as well. Unfortunately the fee classification issued for the proctors and probably also the scribes by Sixtus IV has not survived. Only under Pope Leo X (1513–21) was a new classification of *taxae* again compiled for the penitentiary, but this does not come under consideration for the time period investigated here.

If the penitentiary imposed a *compositio* on the suppliant, he had to reach deep into his pockets. The normative sources do not state precisely in which cases such fines were ordered. This type of information emerges from the *taxa* lists only at the beginning of the sixteenth century. In the registers of the penitentiary itself, one can only gather that, from the pontificate of Pope Calixtus III on, a composition was always imposed for the deliberate transgression of a prohibition, regardless of the degree of consanguinity. From the time of Pius II, the penitentiary imposed a fine for all marriages contracted in the third degree and with knowledge of an impediment.¹¹⁵ Most cases with compositions in fact have to do with marriages that were contracted with knowledge of an impediment and in the third degree of consanguinity. The nature of the offense apparently did not play a large role in determining the amount of the penalty. The *compositio* did not necessarily differ according to whether the couple was related in the third or fourth degree and/or whether the couple had married in knowledge or ignorance of the impediment, as was asserted in some older works.¹¹⁶ The sum of a composition payment in the chancery and penitentiary for the period of the Barbo pope, Paul II, can be obtained, since specific amounts for a composition are recorded in the Vatican Archive series *Introitus et Exitus* and *Taxae* for his reign.

According to the records, the average value for a composition in cases of an impediment of spiritual kinship at the chancery came

114. This value is according to Thomas Frenz, *Die Kanzlei der Päpste der Hochrenaissance (1471–1527)* (Bibliothek des DHI in Rom 63; Tübingen, 1986), 232.

115. Cf. Müller, "Gebühren," 253.

116. Göller, *Die päpstliche Poenitentie*, 2.1.79ff.

to nine camera florins.¹¹⁷ Corresponding numbers for a dispensation from the same impediment in the penitentiary are unfortunately missing. One can gather from a list of *taxae* from the beginning of the sixteenth century that up to 100 ducats had to be paid for a spiritual consanguinity. For a fee of from twenty-five to more than fifty *grossi*, that would have been a tenfold increase!¹¹⁸ The average value of a composition payment in cases of an impediment in the third degree of affinity (relation by marriage) was also considerable, while the corresponding sum in the penitentiary was far lower. According to the same source, the sum amounted to twenty-nine camera florins at the chancery,¹¹⁹ while only about seven-and-a-half camera florins had to be paid for the identical impediment at the penitentiary.¹²⁰ The average value of a composition in cases of the presence of a consanguinity by blood in the third degree were even higher, for they came to forty-three-and-a-half camera florins when the chancery dispensed the pardon,¹²¹ while the petitioners were required to pay on average only four-and-a-half florins in the penitentiary, but admittedly, with only two cases, the basis for comparison is very slight.¹²² In the chancery¹²³ and in the penitentiary,¹²⁴ the average value in cases of the fourth degree of consanguinity by blood amounted to seven camera florins. The corresponding sum for the

117. Twelve amounts in total; 10 camera florins in RG 9.237, 377, 446, 1022, 1256, 3782, 4364, 5433, 5984, 6263; 8 florins in 3207; for a confirmation in RG 9.11, 20 camera florins were imposed.

118. Müller, "Gebühren," 253.

119. RG 9.2192 (6 florins); 2209 (30 florins); 3176 (20 florins); 3372 (10 florins, *quia iuravit de paupertate*); 4605 (60 florins); 5117 (30 florins); 5281 (16 florins); 6035 (60 florins).

120. RG 9.2109 = RPG 6.186 (2 florins); RG 9.3977 = RPG 6.209 (4 florins); RG 9.6281 = RPG 6.222 (8 florins); RG 9.1 = RPG 6.261 (3 florins); RG 9.3802 = RPG 6.340 (10 florins); RG 9.3956 = RPG 6.356 (14 florins); RG 9.2719 = RPG 6.367 (12 florins).

121. RG 9.972 (60 florins); 1262 (8 florins); 2209 (30); 2644 (100); 2846 (14); 3665 (102; for a count of Salm); 3998 (30); 4084 (50); 4140 (60); 4573 (*gratis, quia iuravit paupertatem*); 4851 (20); 4958 (30); 5117 (30); 5986 (60 for a count of Rechberg); 6035 (60 for a family of Andlau).

122. RG 9.3987 = RPG 6.185 (3 florins); RG 9.5658 = RPG 6.260 (6 florins).

123. RG 9.6170 (4 florins); 6177 (10 florins).

124. RG 9.778 = RPG 6.415 (4 florins); RG 9.108 = RPG 6.759 (10 florins); RG 9.653 = RPG 6.377 (4); RG 9.6177 = RPG 6.724 (10).

Table 2. Average Composition Payments in the Chancery and Penitentiary

Familial Relationship	Chancery	Penitentiary
	RG 9	RPG 6
3rd degree of consanguinity	43.5 camera florins	4.5 camera florins
3rd degree of affinity	29 camera florins	7.5 camera florins
4th degree of consanguinity	7 camera florins	7 camera florins
4th degree of affinity	NA	5.5 camera florins

fourth degree of affinity came to around five-and-a-half camera florins in the penitentiary.¹²⁵ Dispensations with payments of a composition for this degree of consanguinity do not exist for the chancery. Set out in a table, the comparison makes clear that, as far as compositions go, the penitentiary dispensed pardons more “cheaply” than the chancery, which also handled far fewer supplications.

As is clear from a comparison of the date of the supplication and that of the effective payment, as a rule the composition followed within one to four weeks after the request. Who undertook the transfer for the suppliants in far-away Germany? In most cases, the proctor paid. Most of the time he also imposed the fees on the petitioner as well as the composition and made sure the letter then reached them. Besides German proctors, like Adam Piscatoris and Johannes Weithas, we meet other curial officials in this business, such as Adrian Hee, Heinrich Libenter, Johannes Haltefast, Alexander Misterlin, and Stephan Nunkilch (as can be seen in Table A2 in the Appendix). The span of demonstrable composition payments from 3 camera florins all the way up to 102 leads one to speculate that these fines were graduated according to social class, which also emerges from the lists of *taxae* from the sixteenth century. As regards the composition for the second and third degree, these lists say, “Here there are no fixed fees, since they are composed according to the position of the person.”¹²⁶

125. RG 9.741 = RPG 6.545 (5 florins); RG 9.928 = RPG 6.620 (6 florins); RG 9.4598 = RPG 6.646 (4); RG 9.2429 = RPG 6.740 (6); RG 9.2374 = RPG 6.811 (6).

126. Göller, *Die päpstliche Poenitentiarie*, 2.1.187: “non est certa taxa, quia secundum qualitatem personarum componitur.”

The sources confirm this principle. If the fine was less than ten camera florins, it was usually a matter of a couple that did not come from the nobility. For the most part the actual paid composition according to the camera register corresponds roughly to the *taxa* list of Cornelius Ruyff dated to shortly after 1500. According to this half-official record, the composition for dispensations by the penitentiary in the third and fourth degree of consanguinity amounted to ten ducats, in an uneven or mixed lineage twenty-five ducats, in a pure third degree, twenty-five ducats for normal mortals, while nobles reportedly paid a higher amount, at least double. According to this same list, for dispensations from a spiritual relationship, the chantery imposed at least 100 ducats as a composition.¹²⁷

A composition could not be avoided even by suppliants with good connections at the Roman curia. When Count Eberhard VI the Younger of Württemberg (1447–1504) and Elisabeth, the daughter of Margrave Albrecht Achilles of Brandenburg, wanted to marry, they had to plead for a dispensation in Rome twice because of consanguinity in the third degree. According to the text of the first supplication from July 17, 1466, in which the third and fourth degree were stated as an impediment, they had already concluded a marriage contract but had not yet consummated the marriage.¹²⁸ Even though their supplication was approved, the dispensation was not granted because the supplication contained a mistake—the two were related in the third degree and not in the third and fourth. They thus swiftly submitted a new, corrected request. For the second request of the couple, registered on August 16, 1466, the penitentiary decreed a composition.¹²⁹ Unfortunately a corresponding entry in the camera register is lacking, so we do not know the amount of the penalty. It was nevertheless paid, for the major penitentiary had the *littera* dispatched to the bishop of Constance on the same date. After checking the facts of the case, the vicar general of Constance, Nikolaus Gundelfinger, conferred the papal approval on the noble marriage. The original with the inserted *littera* of the penitentiary is found today in the main archives of Stuttgart.¹³⁰

127. Müller, "Gebühren," 250, ll. 15–18; 251, ll. 53–60, and 253, ll. 146–53.

128. RPG 5.269; the date should be corrected to 1466.

129. RPG 5.320.

130. REC 13263; original in the HStA Stuttgart A 602 Nr. 475.

If one takes the 824 compositions of our period, 1455–1500, and assumes an average of six camera florins per payment, then nearly five thousand camera florins flowed from the pockets of German couples into the cash register of the papal datary in those years. The sum must have been considered a rather low income in the papal budget, but in Germany, according to the grievances of the German nation, it certainly contributed to the papal curia being decried as greedy. Ever since Calixtus III had started to reserve these sources of income personally for the pope, the *compositio* enjoyed a rising popularity among the popes of the period.¹³¹ Pius II (1458–64) already used them liberally, whereas Paul II (1464–71) appears to have been rather reserved on this front. In the first year after a change in pontificate (1455, 1458, 1464/65, 1471/72), the incoming amounts receded heavily until the new pontiff named a datary and had been assured of his reliability. Under Sixtus IV and Innocent VIII, the number of compositions inflicted rose considerably and in 1500 amounted on average to a fourfold increase over the number from the year 1455. The geographical distribution of the 824 composition payments shows the already observed preponderance of the twelve Rhineland–southern German bishoprics. Eighty percent of the money came from these dioceses alone (in parentheses are the number of marriage dispensations with an imposition of a composition), from Augsburg (79), Cologne (30), Constance (132), Chur (80), Liège (54), Mainz (43), Speyer (39), Utrecht (89), Würzburg (32), Brixen and Worms (20 each), and Sion (23 cases). These dioceses also lie in the most strongly developed regions of the empire economically.

Since for the vast majority of the petitioners a process before a diocesan officialate court had preceded the way to the Roman well of grace, as will be seen in the fourth chapter, almost every couple had already made payments to the church back home. What can be stated about these costs? We will restrict ourselves to the dioceses of Basel, Chur, Cologne, Constance, and Regensburg, for which isolated sources for the period between 1480 and 1524 exist.¹³² In Ba-

131. Cf. RPG 3.xvi–xviii.

132. For the numbers, cf. Thomas D. Albert, *Der gemeine Mann vor dem geistlichen Richter: Kirchliche Rechtsprechung in den Diözesen Basel, Chur und Konstanz vor der Reformation* (Quellen und Forschungen zur Agrargeschichte 45; Stuttgart, 1998),

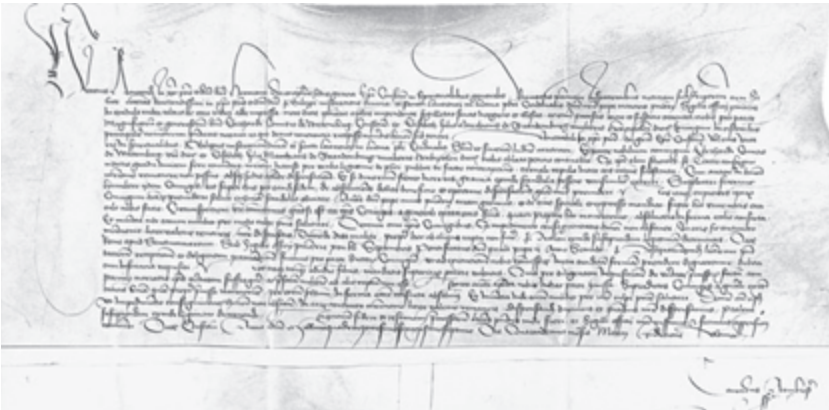


Figure 5. The vicar general of Bishop Hermann of Constance carries out the mandate of Major Penitentiary Philippus (cf. RPG 5.269 and 320) and grants Eberhard of Württemberg and Elisabeth of Brandenburg absolution and dispensation for their not-yet-consummated marriage contracted in the knowledge of their consanguinity in the third degree, March 14, 1467. Stuttgart, Hauptstaatsarchiv.

sel a summary process for a marriage cost at least twelve shillings. A woman was penalized two florins by the general vicar of Basel for a divorce in 1464. In Constance in 1345, the fees came to ten shillings, while the penance for *fornicatio* amounted to eight shillings and that for divorce to sixteen at the end of the fifteenth century. The execution of a written papal dispensation (*littera*) cost between a half florin and one pound. Married couples from Chur who had married with knowledge of an impediment paid a penalty of five florins to the episcopal treasury; if they were ignorant of the impediment, they paid two florins. Bishop Heinrich von Hewen had set an upper limit of two florins for the writing and sealing of a judgment in a (no doubt summary) marriage process; in fact, higher costs are

75–85 and 115–17; Christina Deutsch, *Ehegerichtsbarkeit im Bistum Regensburg (1480–1538)* (Forschungen zur kirchlichen Rechtsgeschichte und zum Kirchenrecht, 29; Cologne, 2005); Joseph Löhr, *Die Verwaltung des Kölnerischen Großarchidiakons Xanten am Ausgang des Mittelalters* (Kirchenrechtliche Abhandlungen 59/60; Stuttgart, 1909).

named in the sources of Chur only rarely.¹³³ Divorce was nevertheless punished with five florins, and the officialate court punished the seduction of a maiden under the pretext of a later marriage with nine florins at the beginning of the sixteenth century. For comparison purposes, consider that, besides wages in kind, a servant working at the episcopal court in Chur took in an annual salary of eight to ten florins, a daily wage of between five pennies and a shilling. Nicolas of Cusa had imposed a penalty designed to deter others from a similar offense, namely two silver marks (roughly six florins), on a couple from the diocese of Brixen in 1449 who had married without an official marriage notice.¹³⁴ In Regensburg, marriage processes before the judges of the cathedral chapter cost on average a florin and twenty pennies; fees for notaries and seal-makers were additional. The losing party had to assume the costs in full.¹³⁵ Apart from the fee of twenty-five shillings for the dispensation from the impediment of consanguinity, there are only a few clues as to the costs of a marital process in the local Basel sources. The Basel judges were accustomed, though, to set the compensation for deflowering at at least ten florins, that is, eight pounds pence, which could also go higher if the economic situation of the accused man allowed for it. The officialate court of Cologne in Werl earned 129 florins from marital cases in 1495. It never inflicted more than two florins and four shillings in a process (for most of the summary kind). The punishments for incest and sodomy turned out to be much higher; in 1515 they came to between three and twenty florins.¹³⁶

To sum up, the "common man" was hardly in the position to raise the costs for an ordinary canonical process; simple people could at

133. Oskar Vasella, *Geistliche und Bauern: Ausgewählte Aufsätze zu Spätmittelalter und Reformation in Graubünden und seinen Nachbargebieten*, ed. Ursus Brunold (Chur, 1996), 78 n.2, 83 n.2, 93 n.2, 95 n.4, 97 n.3, 141: "durchschnittlich 2 rhein. Gulden." Thomas D. Albert, "Kirchliche Rechtsprechung in Chur," *Traverse* 10 (1996), 148.

134. For the wage, Albert, *Der gemeine Mann*, 85; on Cusa, cf. Löhr, *Xanten*, 214 n.1.

135. Deutsch, *Ehegerichtsbarkeit*, 137.

136. On Basel, Albert, *Der gemeine Mann*, 166; on Werl, Richard Bettgenhaeuser, "Drei Jahresrechnungen des kölnischen Offizialatsgerichts in Werl, 1495–1516," *Annalen des historischen Vereins für den Niederrhein* 65 (1898), 196–99.

most afford a summary marriage process but hardly the way to the Roman well of grace, and certainly not if a composition had to be paid. Until the end of the fifteenth century, the fees for summary proceedings before a German officialate court rarely seem to have gone beyond two florins and seem instead to have stayed below that sum. Additionally, one can ascertain from the officialate accounts that the ecclesiastical courts in the late Middle Ages imposed increasingly high penalties for immoral behavior within and outside of marriage.



Marriage Law in the Supplications

Before we let the sources themselves give expression to piteous, exciting, sometimes almost unbelievable, and occasionally scandalous stories, the reader may ask whether Martin Luther, in his provocative claim cited at the beginning, was not right after all. Why in the world should the distant Roman pope be the court of highest instance for married couples in Cologne, Magdeburg, Augsburg, Constance, or Chur? If the church did get mixed up in questions of marriage, then why didn't the jurisdiction lie with the parish priest or, at the highest level, with the local bishop? The answer to this question has to do with the position of the pope in the church and with the system of medieval canon law, the *ius canonicum*, which since the middle of the twelfth century had experienced a rapid development and systematization that remained in effect for the rest of the Middle Ages and all the way to the year 1917. The successor of Peter stood over the law like the ancient Roman emperor; he was *legibus solutus*. He was also therefore the only person in the church to possess the "fullness of power" (*plenitudo potestatis*) and the authority to approve exceptions from general prescriptions (dispensations), to be lenient toward individuals after they had transgressed the law (absolutions), or to grant other concessions (indults and licenses).

Foundations of Canonical Marriage Law

Late medieval marriage law was based largely on the decrees of the Fourth Lateran Council of 1215.¹ The conciliar fathers passed wide-reaching prescriptions, which all entered into the central ecclesiastical collection of law promulgated by Pope Gregory IX in 1234 called the *Liber Extra* (*extra* because outside of Gratian's *Decretum*) and became the foundation of late medieval marriage law. At the same time, marital matters belonged primarily to "the jurisdiction of the episcopal court. Marital matters could consist of decisions about the validity of a marriage, the annulment of a marriage, divorce, clandestine marriages, betrothals (as well as) judgments over separation from table and bed."² We will also encounter all of these situations in the supplications of the penitentiary. The prohibition in place since late antiquity of a marriage between close relatives (prohibition of incest) were narrowed from the seventh to the fourth degree of unknown and known consanguinity in canons 50–51 of the Fourth Lateran Council. The council also prescribed the public proclamation of an intended marriage before the parish priest (today called the banns of marriage) and prohibited clandestine marriages, which, even if they did not conform to the rules, were nevertheless valid, and assigned them the penalty of excommunication. The banns of marriage were already practiced around 1200 in the Anglo-Norman realms, as diocesan synods of Paris and Westminster attest. In other regions of Christendom, the implementation of these norms took several decades. But the ecclesiastical norms ultimately prevailed and were known to everyone everywhere in the late Middle Ages.³

1. Christina Deutsch has recently provided an excellent survey of the principles of canonical marriage law, *Ehegerichtsbarkeit*, 29–60.

Translator's Note: For an overview of canonical marriage law in English, cf. James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago/London: University of Chicago Press, 1987). The period including the Fourth Lateran Council is discussed in chapter 8, "Marriage and Sex in Canon Law from Alexander III to the *Liber Extra*," 325–416.

2. Winfried Trusen, "Die Gelehrte Gerichtsbarkeit der Kirche," in *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*, vol. 1, *Mittelalter (1100–1500): Die gelehrten Rechte und die Gesetzgebung*, ed. Helmut Coing (Munich, 1973), 486.

3. Frederik Pedersen, "Did the Medieval Laity Know the Canon Law Rules on

By and large, preachers were responsible for spreading the knowledge of the rights and duties of husband and wife in marriage. Members of the mendicant orders, who around 1300 amounted to as many as 40,000 men educated for the most part at the universities and order schools, held the religious value of marriage before the eyes of the faithful from the pulpit. In the context of the *ad status* sermon for married people on the example of the interpretation of John 2:1, the marriage at Cana, it was common since the thirteenth century not only to lay on the audience's hearts the three goals of marriage (*fides, proles, sacramentum*—fidelity, progeny, sacrament) but also practical rules of behavior. All extramarital intercourse (*fornicatio*) and divorce were condemned. Sexual activity served the purposes primarily of procreation, and after the Fall, secondarily, of the bastion in the struggle against sexual desire. The Lord God's establishment of marriage through Adam and Eve in paradise gave rise to its sacramental character, which was further deepened through the presence of Christ at the wedding at Cana. The chaste marital fellowship between Mary and Joseph served as a spiritual example. Marriages could face separation because of *fornicatio*, in which cases abstinence was imposed even on the innocent party afterwards. Interestingly, several mendicant preachers rejected impotence as a ground for divorce. They also mentioned the most important impediments to marriage in their sermons.⁴

The canon law stipulated twenty-one impediments to marriage. These stipulations were brought into a system in the course of the thirteenth century and formed a solid framework for all questions of betrothal and marriage. Historians of canon law distinguish between diriment and prohibitory impediments (that is, between impediments that justify dissolving a marriage and impediments which prohibit a marriage from being contracted).⁵ Only a few impediments

Marriage? Some Evidence from Fourteenth-Century York Cause Papers," *Mediaeval Studies* 56 (1994), 11–152.

4. Cf. David d'Avray and M. Tausche, "Marriage Sermons in *ad status* Collections of the Central Middle Ages," in *Modern Questions about Medieval Sermons*, ed. Nicole Bériou and David L. d'Avray (Biblioteca di medioevo latino 11; Spoleto, 1994), 77–134.

5. Cf. Johann B. Sāgmüller, *Lehrbuch des katholischen Kirchenrechts*, 3rd ed. (Freiburg, 1914), 578–681; Jean Gaudemet, *Le mariage en Occident: Les moeurs et le droit* (Paris, 1987); Philippe Toxé, "La copula carnalis chez les canonistes médié-

of either kind are of concern, however, for understanding the penitentiary supplications, especially the already mentioned too close relationship by blood or marriage up to the fourth degree, as well as spiritual kinship (*cognatio spiritualis*).⁶ Marriage impediments also resulted from the sexual norms of the church, like the prohibition of any pre- or extramarital intercourse and the obligation of clerics, from the rank of subdeacon up, to observe a celibate life. He who knowingly or unknowingly transgressed these norms fell under automatic excommunication, which meant nothing less than the prohibition to receive the sacraments and thus the exclusion from the congregation and along with it social discrimination. In particular, excommunication followed “automatically” (*ipso facto*) after couples contracted marriages clandestinely or transgressed the canon law while knowing about an impediment. These punishments were not unknown to married couples and those wanting to marry in the German empire, as can be shown with one example out of a great number of illustrative instances. Conrad Ziegler from Goppingen and his wife Magdalena were aware that, “on the basis of the constitutions of synods and provincial councils, they had fallen under excommunication because of their clandestine marriage.”⁷ Since these legal stipulations derived from the pope, that is, from a council under his leadership, no one could grant a dispensation from them or absolve couples who had erred except the successor of Peter.

In this chapter, I briefly lay out the most important canonical stipulations that were fundamental for making a valid marriage in the fifteenth century and that repeatedly receive mention in the Ro-

vaux,” in *Mariages et sexualité au Moyen Age. Accord ou crise?* ed. Michael Rouché (Colloque international de Conques; Paris, 2000), 123–33.

6. In the rubric to X 4.10.4, Raymund de Peñafort succinctly summarized the current legal theory: “Inter patrem baptizati et uxorem levantis prius ab eo cognitam contrahitur compaternitas efficax ad matrimonium dirimendum.” Quoted in Toxé, “La copula carnalis,” 131.

Translator’s Note: In order to avoid the confusion arising from the two major meanings of “relationship” in English (expressed by two different words, *Beziehung* and *Verwandschaft*, in German), I have at times found it suitable to use the somewhat old-fashioned “kinship” instead of “relationship” when translating the German *Verwandschaft*, particularly in reference to the marital impediment of *cognatio spiritualis*.

7. RPG 6.1144 (year 1478).

man supplications. Such a discussion will help us better understand the details mentioned in the supplications. Afterwards I give a short overview of the central ceremonies and customs in betrothal and weddings in the late Middle Ages. In order not to let these sections become too dry and weighted down with theory, I illustrate their main points with examples from the supplications.

The Banns of Marriage

The Fourth Lateran Council's innovative prescription of greatest consequence for the conduct of all Christians with regards to marriage was the banns of marriage, to this day common in the Catholic Church. In canon 51, the 1200 conciliar participants in the Lateran Basilica in Rome had prescribed the public announcement of an intended marriage in the parish church by the *sacerdos proprius*, the parish priest or his representative.⁸ This procedure is designated with the word *bannus* in the supplications. But what purpose did the banns of marriage serve? In this way, before every marriage, people from the region where the couple lived could bring forward possible objections to a contraction of marriage. It was thereby possible for an individual other than the bride or bridegroom to register older "claims" to one of the partners; an earlier relationship with that individual had the potential to stand in the way of the marriage. As for the practical implementation of the Lateran decree, baptismal registries were laid out in the parishes, from which the priest and also the couple intending to marry could inform themselves about potential impediments of consanguinity. It is to be assumed that baptismal registries in the fifteenth century already existed in a great many parish churches of the German empire. For example, the diocesan statutes of Constance in 1435 commanded the use of baptismal books in the bishopric.⁹ According to the custom of the land, the banns of marriage were proclaimed from the pulpit on two or three successive Sundays at Mass so that parishioners could name possible impediments to the marriage not revealed in the baptismal registers.¹⁰

8. COD, p. 258, c. 51 = X 4.3.3.

9. REC 9662.

10. RPG 7.1248 (Liège, 1491).

The regulations of the council in marital matters concerning the banns and the impediments of consanguinity were largely accepted and had prevailed everywhere in Christendom in the late Middle Ages, and they were also practiced in parish churches. That point is very precisely formulated in a supplication from Utrecht, which stated about a couple, "Not knowing that some marital impediment existed, after proclamations and the banns had been made known beforehand in their parish church according to the custom of the land, so that anyone who wanted to or might have been able to assert a legitimate impediment to the marriage or make an objection could have done so within a certain timeframe, and because no one put forward an objection, the couple, Franco and Heilwig, publicly contracted a marriage *per verba de praesenti* and consummated the marriage."¹¹ In a similar formulation, a couple from Liège claimed to have gotten married and consummated the marriage after a public proclamation of the banns in the church according to the custom of the land.¹²

Nicolas and Agnes from the archbishopric of Trier had held to the prescriptions in a similarly correct fashion.¹³ When they wanted to marry, they first contracted a marriage *per verba de futuro*, an engagement by today's understanding, without consummating the marriage. Then they had "the banns of marriage customary in the region ordered in their [parish] church." This resulted in the revelation that the two were related to one another in the fourth degree, whereupon they submitted a request for dispensation in Rome. A correct proceeding of this kind was, however, the exception throughout the fifteenth century, as a glance through the register of the penitentiary reveals. As we will see, by no means did all couples wanting to mar-

11. RPG 6.3507 (year 1473): "ignorantes aliquod impedimentum inter eos existere proclamationibus et bannis in par. eccl., sub qua tunc cohabitabant, secundum morem patrie prehabitis, ut quod si quis vellet aut valuerit aliquod impedimentum legitimum contra matrimonium huiusmodi dicere vel opponere infra certum tunc expressum terminum diceret et opponeret, et quia tunc nullus contrarium dixit vel opposuit, ipsi Franco et Helwigis inter se matrimonium publice per verba de praesenti contraxerunt et carnali copula consummarunt."

12. RPG 7.1063 (year 1490).

13. RPG 6.829 (year 1476).

ry hold to the order desired by the church when it came to marriage.

The process just portrayed forms instead the ideal case for contracting a marriage. A correct marriage was supposed to follow in several steps. First the couple contracted an engagement (*sponsalia per verba de futuro*) or an immediately effective marriage contract (*matrimonium per verba de praesenti*), then they had the banns of marriage proclaimed in their parish church, and, if no impediment (*impedimentum*) existed, they could celebrate the ecclesiastical solemnization of the marriage (*sollemnisatio*). According to canon 31 of the Council of Vienne (1311–12), this ceremony, which should not yet be equated with the wedding Mass of today, could be performed only by the parish priest in charge, the *presbyter parochialis*.¹⁴ In the Alemannic linguistic region, the Latin word *sollemnisatio* is rendered as “offener Kirchengang” (openly going to church).¹⁵ As in the banns of marriage, so also in the solemnization of the bridal pair, there were sums, so-called supporting fees, to be paid.¹⁶ For the most part, the taking of the bride into the house of the bridegroom and the handing over of the dowry (*dos*) were bound to the *sollemnisatio*. Only then, at the very end, was the physical consummation (*carnalis copula*) supposed to occur.

But this ideal order for the acts concluding a marriage was not always followed; it was not a rare occurrence, and indeed it apparently happened in the cases of a large number of couples, that the marriage contract and the consummation preceded the banns. That could create legal problems. Without knowing about an impediment, Heinrich and Katherina from the bishopric of Cologne concluded a marriage contract in the presence of numerous relatives in full public view (but without the participation of a priest). They then carried out the *copula carnalis*, and Katherina became pregnant.¹⁷ Only afterwards did they have the banns proclaimed twice in their parish ac-

14. COD p.387, ll.10 ff.

15. REC 14118 (year 1474).

16. Sabine Arend, *Zwischen Bischof und Gemeinde: Pfarrbenefizien im Bistum Konstanz vor der Reformation* (Schriften zur südwestdeutschen Landeskunde 47; Leinfelden-Echterdingen, 2003), 59–60.

17. RPG 3.1792 (year 1456).

cording to the local customs, after which the *sollemnisatio* was to be celebrated. After the banns, one of Heinrich's sisters, a certain Bela up dem Rade, raised an objection to the marriage. Bela evidently wanted to inhibit the marriage of her brother, for she asserted that a certain Reinhold, related to Heinrich by blood in the third degree, had slept with Katherina prior to her marriage. The official in charge of the Cologne archdiocese of Xanten nevertheless found no grounds for the objection. He investigated the case and declared the marriage between Katherina and Heinrich valid. To be on the safe side, the couple turned all the same to Rome with the request to have the validity of their marriage confirmed, their children declared legitimate, and the authorization for the solemnization of their marriage granted. The major penitentiary explicitly allowed these things, but he imposed the payment of a *compositio* on the two.

Supplications of the penitentiary frequently reveal that objections to the banns had the capability of being truly effective. Cornelius Nikolay and Elisabeth Cornelii from the bishopric of Utrecht had gotten married in due order.¹⁸ Nevertheless because—something they did not know at the time—Cornelius's deceased first wife had been related to Elisabeth by blood in the third degree, a corresponding relationship by marriage existed between the spouses. When Cornelius learned of the impediment from a third party, he sent Elisabeth away of his own initiative without the permission of an ecclesiastical court and got engaged to Elisabeth Petri, who later also had children with him. When Elisabeth Cornelii, whom Cornelius had left, learned of this, undoubtedly through the banns, as immediately becomes clear, she wanted to block this "presumed marriage" (*matrimonium praesumptum*). "She went to the priest in whose church the banns must in most cases have been proclaimed and told him that he could not continue the proceedings (which he also did not do), since Cornelius had contracted a marriage with her and was her husband." Cornelius on the other hand attempted to obtain through a *littera declaratoria* a certification from Rome that he could continue in his marriage with Elisabeth Petri all the same. According to standard procedure,

18. RPG 7.2517 (year 1487).

the *littera* was dispatched to his bishop with the condition that the case be investigated. How might the Utrecht official have made a decision here? The decision would perhaps have relied on the definition of *matrimonium praesumptum*. In ecclesiastical law, a *matrimonium praesumptum* meant a marriage that the two partners claimed was valid but that had not been contracted in a correct way.¹⁹

The information about the *bannus* and its consequences are not always very precise in the individual supplications. In the supplication of a couple from Bamberg from the year 1459, it only says that after the banns a certain Margarete publicly named grounds against the two marrying. Because of this, the couple turned to the pope. The regent of the penitentiary referred the supplication back to the bishop of Bamberg with the instruction to abide by canon law.²⁰ With that the requested dispensation and the legitimization of the children depended on the judgment of the bishop alone; the penitentiary and the German proctor in Rome by the name of Hermann Broyel did not possess sufficient information of the affair to make a definitive decision.

In conclusion, one very fitting example might elucidate the wide-reaching social consequences of the introduction of the ecclesiastical banns of marriage and its disciplining effect in the late medieval community. Ulrich and Anna from the bishopric of Augsburg made an impediment of kinship by marriage known to the pope in the year 1476.²¹ This had arisen from the fact that, before his marriage, the bridegroom had committed *fornicatio* with three women who were related to his future bride in the third and fourth degree. Who had discovered this and denounced the pair for it? According to the supplication the couple declared that they knew nothing about it. Only "later did it come to their knowledge." One would think that at least the man would have remembered the love affairs, even if he very wisely had kept his future wife in the dark with regard to the liaisons with her relatives. Apparently such very private relationships came to the

19. On this point, cf. X 4.1.30; on *matrimonium praesumptum*, cf. Jean Mullen-
ders, *Le mariage présumé* (Analecta Gregoriana 181, series Facultatis Iuris Canonici,
sectio B vol. 30; Rome, 1971).

20. RPG 4.82.

21. RPG 6.844.

light of day only through the ecclesiastical banns. The three former lovers of Ulrich very possibly went back to the priest upon hearing the banns and made known their relationship with him, whereupon the ecclesiastic dutifully brought in the official. Thus, in many cases, if the baptismal books did not reveal any impediment, only through the banns did impediments come to light, possibly through accusations of disappointed women and men who sought to block an announced union. If the impediments had been made public even once, the official had to become active in his official capacity and summon the couple. The institution of the banns of marriage in the home parish of the bridal couple let an efficient social and moral control arise. Its effect on the sexual behavior of young men and women should not be underestimated. Thousands of matrimonial dispensations of the papal penitentiary give eloquent testimony on this front.

The Most Common Impediments to Marriage

I have already used many technical terms of marriage law that now must be explained. First of all, I want to clarify the marital impediments (*impedimenta*) that make it impossible to bring about a legitimate marriage, that is, the prohibitory impediments. For our purposes, the following are important: spiritual kinship (*cognatio spiritualis*), namely being related as godparent to godchild, being related as the sponsor of a confirmation to the confirmand, and the impediment of public decorum (*impedimentum publice honestatis iustitiae*; i.e. marriage to the relative of a former partner); the ceremonial vow (*votum*); kinship by marriage (*affinitas*); kinship by blood or consanguinity (*consanguinitas*); and subsequent affinity (*affinitas superveniens*).

Spiritual Relationship

Spiritual relationship or kinship (*cognatio spiritualis*) was set beside natural relationships conditioned by physical birth and descent. It arose through godparenthood, sponsorship at confirmation, and marriage to the relative of an earlier partner (public decorum). The penitentiary could make dispensations *de speciali* from a marriage impediment of spiritual kinship only beginning in the year 1455 on the

basis of a *facultas* that Pope Calixtus III conferred on it.²² Previously, every request had to be approved by the pope himself *de speciali et expresso*. (For a discussion of these signature forms, see above in chapter one.) The law of the Catholic Church did not do away with the marital impediment of *cognatio spiritualis* until 1983.

Godparenthood

According to the teaching of the church, a spiritual relationship arose from sponsorship; the godparent and the sponsor at confirmation became the spiritual father or spiritual mother of the child. In canon 51, the Fourth Lateran Council had classified a spiritual relationship as a marriage impediment on exactly the same level as relationship by blood and by marriage. This meant that a marital union between godchild and godparent as well as the godparent's children was ruled out. The formulas in use at the penitentiary knew twenty different possibilities out of which a spiritual relationship grew.²³ By all appearances, godparenthood was equated with consanguinity in a concrete way, so that a double godparenthood corresponded to a *consanguinitas* in the second degree. That emerges from the text of a supplication of a man from Liège, where it says that the parents of a young man who was supposed to be ordained a priest had a close blood relationship of a sort, because "each of the spouses had stood as a godparent to a child of the other" (probably from earlier marriages).²⁴

But how could such a relationship of sponsorship be proven? The memory of those concerned could deceive and turn out to be unreliable. A baptism often lay many years in the past. The baptismal books mentioned above served as objective proof. Not only the names of the child and parents were entered in them but also the name of the godparent. In this way a spiritual relationship could be proven independently of those who participated in the administration of the sacrament. The wording of the supplications reveals interesting details about the practice of godparenthood. A supplication

22. Göller, *Die päpstliche Poenitentiarie*, 2.1.169ff.

23. Göller, "Walter Murner," 192ff.

24. RPG 3.1722 (year 1455).

dated from 1467 with the request for a dispensation from a *cognatio spiritualis*, which had reached Rome from Augsburg, reads, "According to the custom of the land, three godparents are to be named at every baptism, and indeed two men and one woman, if the child is a boy, and two women and one man in the case of a girl."²⁵ In the case of the Augsburg supplication, a fourth godparent, another woman, had been present at the baptism of a girl besides the two female godparents and the one male. She sought a *littera declaratoria* with the confirmation that no spiritual relationship bound her to the father of the child, whom she had married after the death of his first wife. That "impure women" were not admitted as godparents is also interesting for cultural history. The reason for this was "so that the child [at baptism] would not catch some blemish from the impurity of the woman."²⁶

The task of the godparents at the administration of the sacrament consisted in making a confession of faith as a representative for the godchild and giving answers to the questions of the priest at the ceremony, called *cathecismus*. In clarifying whether or not a spiritual relationship existed, it could be decisive that the person in question had not been involved in answering the questions of the officiating priest. A woman by the name of Anna was seven years old when she was in attendance at the baptism of a child from the first marriage of her future husband. In order to exclude a *cognatio spiritualis*, she stated in her supplication that she had "not answered the questions of the priest performing the baptism, as is otherwise common for godparents."²⁷ A *cognatio spiritualis* likewise failed to arise, the penitentiary decided, owing to the fact that a child of the age of seven acted as godparent at the behest of the father.²⁸ Even if a man and his wife acted as godparents to the same godchild, no spiritual relationship formed between them but only with the child.²⁹ Complicated rela-

25. RPG 5.2022. The same number of godparents was common in Cologne: Wilhelm Janssen, *Das Erzbistum Köln im späten Mittelalter, 1191–1515*, 2 vols. (Cologne, 1995), 2.1.90.

26. RPG 6.3497: "... ne forte puer aliquam posset ex sua immunditia concipere maculam."

27. RPG 6.3580.

28. RPG 6.3672.

29. RPG 6.3748 (year 1482).

tionships in connection with godparents and children often led to inquiries at the penitentiary. Adolf Emerici from Londorf near Gies-sen in the bishopric of Mainz had married a certain Katharina, the granddaughter of the deceased first wife of his father. Adolf came from the second marriage of his father, which he had entered with another woman named Katharina. Adolf wanted to have certified that no impediment between him and his Katharina existed, either of blood relationship or relationship by marriage or a spiritual relationship.³⁰

Although the awareness of an especial bond through sponsorship seems to have been present among the late medieval population as a whole, several couples claimed in their supplications that they were not aware that an impediment arose from it according to canon law. Heinrich and Margarete from the bishopric of Cologne well remembered that her father "had stood as godfather to (Heinrich), but they did not consider this circumstance an impediment to their marriage." A couple from Mainz expressed the same conviction, as did a couple from Augsburg in the same year in the case of sponsorship at a confirmation.³¹ A year later a supplication from Cologne reads, "The petitioners had not viewed [the godparenthood known to them] as a marriage impediment."³² It is interesting that, in supplications of later years, no one brought forth the argument "we did not hold the sponsorship to be an impediment." The last time such an excuse was mentioned was in 1465.³³

Could a spiritual relationship become a problem even after a marriage was contracted? This question was brought to the penitentiary in a supplication in 1479 from the Baltic bishopric of Riga. A married couple had gotten married clandestinely; some time later the wife stood as godmother to a child with whose mother her husband had had sexual relations, but she did not know this. Who the fa-

30. RPG 6.3773 (year 1482).

31. Cologne: RPG 3.1683; Mainz RPG 3.1711; Augsburg 3.1720, (all from the year 1455).

32. RPG 3.1817.

33. RPG 5.169. Additional older examples of a declared lack of familiarity with the *impedimentum* may be found in RPG 3.1717 (year 1455), 1720 (year 1455), 1817 (year 1456), RPG 4.180 (year 1459).

ther of the child was is not reported; it apparently could not be determined, for, according to the text of the supplication, the mother had “had affairs with several men.” In this way the wife might have been connected to her husband by a spiritual consanguinity without knowing it. The penitentiary, represented by the major penitentiary and an *auditor sacri palatii*, nevertheless decided that in this constellation no *cognatio spiritualis* was to be established and the couple could remain married.³⁴ The problem was very similar in the case of a Johannes Boranghel from the Baltic Tartu (formerly Dorpat), who had clandestinely married a widow from Riga by the name of Katherina. Without his knowledge, his wife had stood as godmother to a child with whose mother he had had sexual relations. It was uncertain, however, whether Johannes was the godchild’s father, because this child’s mother had also given herself to many men; in any case this child had never been thought to be his son. Since Johannes now desired the solemnization (*sollemnisatio*) of his marriage with Katherina, he requested a *littera* from the pope saying that no spiritual kinship existed between him and Katherina and that they could celebrate the *sollemnisatio* of their union.³⁵

Doubt about a probable *cognatio spiritualis* could especially arise when a child had been immediately received into the community of Christians through an emergency baptism after a difficult birth in which he or she was threatened by death. In necessity, and this was already the case in Gratian, laypersons, even women, could perform the baptism and do so even outside of the church building.³⁶ Frequently the midwife is named as the administrator of the emergency baptism. If by good fortune the child then survived, the parents later went to church in ceremonial fashion, and the baptism was conditionally administered once more. In this case, of course, godparents were involved. Canon law forbade repeated baptisms; Gratian had rejected a second baptism with reference to the words of the apostle, “One Lord, one faith, one baptism” (Ephesians 4:5) and a decision of Pope Leo the Great, in order not to fall into the heresy of repeated

34. RPG 6.3665.

35. RPG 6.3725 (year 1481). A parallel case is also in RPG 5.2185.

36. *Decretum Gratiani* D.93 c.13; C.30 q.3 c.4, and De cons. D.3 c.22.

baptism.³⁷ But in order to go forward with assurance that the emergency baptism did not present some mistake in form, a child could be baptized conditionally at a later time. The penitentiary reached the same decision in the case of the emergency baptism of which a supplication from Michael von Oyen and Katharina Strevill of Cologne speaks, a couple that moreover had gotten married clandestinely.³⁸

Did sponsorship at a repeated, conditional baptism effect a spiritual relationship? Hermann Korfs and Elsa Clesen from Trier laid such a dubious case, which they found out about only after their wedding, before the papal penitentiary in 1475.³⁹ Paul, Elsa's previous husband, who had in the meantime passed away, was the godfather of one of Hermann's children, whom Hermann had had with another woman and who had been baptized by a midwife in an emergency immediately after birth. The petitioners argued that acting as a godfather at such a baptism "would have forbidden a future marriage of the two but not dissolved their already contracted marriage." A clear reference to a decretal of Pope Innocent III lurks behind these words. The decretal had not allowed the dissolution of an already contracted marriage because of an *affinitas superveniens*, about which more will be said below.⁴⁰ The supplicants therefore asked for a papal declaration that they could rightfully remain in their marriage. In his signature, the auditor came to the decision that the bishop of Trier could allow this as long as the child at his first baptism in the emergency situation had been baptized *in forma ecclesie et rite*. It thus depended on the formal validity of the administration; when the rite was performed correctly, a spiritual relationship arose between the sponsor and the baptized child.

The children of priests were exposed to an especial threat through the impediment of spiritual kinship if they married a person from their father's parish, for a relationship also arose between the baptizing priest and the baptized child. In principle, all members of a parish

37. C.1 q.1 c.57 rubric: "Baptisma semel traditum non est reiterandum."

38. RPG 6.3797 (year 1483): "si ... Catherina rite baptisata fuisset et debitis omnibus sollemnitatibus necessariis."

39. RPG 6.3578.

40. X 4.12.6.

were the “parish children” of the pastor. And therein lay the danger of a marital impediment. A well-documented case from the Swiss Misox, which at that time belonged to the bishopric of Chur, can illustrate the situation in question. Nicolas and Margarete had married without suspecting any impediment standing between them even in the most distant degree. Only later did they discover that Margarete’s father, a priest active in the care of souls in Misox, had baptized Nicolas, whereby he, because counting among the congregation of the father, was bound to the priest’s daughter through the bond of *cognatio spiritualis*.⁴¹ In a comparable situation two years later, Johannes and Katherina from the bishopric of Mainz turned to the pope with a request for clarification. They had contracted a marriage without knowing that Johannes was also a parish child (*filius spiritualis*) of Katherina’s father, the parish rector of a church in Gernsheim, and had received the sacrament from him or his vicar. Could they, despite a possible spiritual relationship, remain married? The answer of the penitentiary, substantiated through prior consultation with the *auditor sacri palatii* Giovanni de Ceretanis, bishop of Nocera, was given by the regent of the office and explained clearly: the *ordinarius* should check whether Johannes had become a *filius spiritualis* of Katherina’s father through baptism, catechism, or confirmation. A spiritual relationship would occur only in these cases, not through the administration of other sacraments like confession or communion.⁴² With only one exception, the official of the penitentiary signing the supplication approved such requests expressly with papal agreement (*fiat de speciali et expresse*).

Sponsorship at Confirmation

Like baptism, confirmation created a special bond, likewise called a *cognatio spiritualis*, between the confirmand and his sponsor and with it an impediment to a possible marriage between the two. As

41. RPG 6.3531 (year 1475).

42. Other relevant supplications in which children of priests had married a partner baptized by their father come from Augsburg (RPG 6.1 [year 1471] and 6.164 [1472, parish of Oberndorf], as well as 6.487 [1478]), Mainz (6.1209 [1478, parish of Gernsheim]), Eichstätt (7.56, signed only *de speciali*), Trier (7.111), Strasburg (parish of Ontzenhausen, 7.813), Osnabrück (7.845), Constance (villa Talham, 7.1132) and Liège (7.1416).

a rule only bishops, and at that time usually a suffragan bishop, administered the sacrament of confirmation. Much like baptism, confirmation had developed its own liturgy at which the sponsor occupied a central function; to be specific, he led the confirmand to the bishop, who anointed the child with holy oil. In general it appears to have been common in Germany to bind a cloth or band around the head of the confirmand after the reception of the sacrament in order to protect the place on the forehead anointed with the chrism and perhaps to enable the holy oil to have a longer effect. On the third day after the confirmation, the linen wrap was removed. The unbinding or loosing of the *pannum* or *panniculum* from the head of the confirmand after the reception of the sacrament did not bring about a *cognatio spiritualis*.⁴³ Nevertheless, as the supplications relate, some questions resulted: When was the sponsorship at confirmation established? With which individuals involved in the ceremony did a *cognatio spiritualis* exist as a result of the administration? The petitioners repeatedly claim only to have participated in the confirmation by affixing or removing the head-cloth.⁴⁴ The penitentiary consistently decided that no spiritual relationship arose through the binding or loosing of the *panniculum*. Also a person who, like a certain Katherina who, "because of the great throng of the people," as a young girl had merely helped the first wife of her later husband bring their children through the crowd to the bishop at the altar, did not acquire a spiritual relationship through such action. A petitioner from Passau also spoke of a heavy crowd at a confirmation. He had protectively brought a child of his lord to the bishop without thereby becoming a sponsor. Confirmations were apparently celebrated only rarely, especially in rural areas, so that the throng of confirmands and their sponsors was always very large.⁴⁵

43. Examples of this are in RPG 6.3440 (year 1471, Mainz); 6.3611 (year 1477, Speyer). On confirmation in general, cf. Janssen, *Das Erzbistum Köln*, 96–98.

44. RPG 4.1648: "solum panniculum confirmationis in ipsius pueri fronte ligavit;" 4.1841: "paniculum in fronte dicti Rudini super crismam positum de ipsius fronte levavit;" 5.2176: "pannum levavit ... non tamen in sacramento tenuerat;" 6.3630: "quidam alter ipsum in sacramento tenuit et pannicellum in signum compaternitatis allegavit."

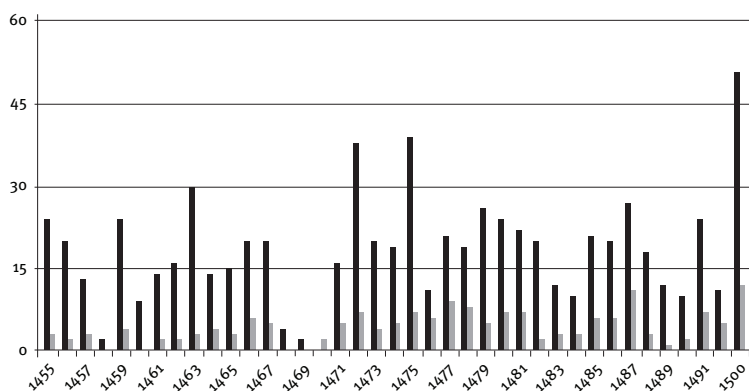
45. RPG 6.3690 and 4.135. Examples from the bishopric of Cologne are in Janssen, 97.

A couple that wanted to marry and knew about an impediment of spiritual consanguinity did well to busy themselves with removing the impediment before they got married. Only a few such couples, however, asked the penitentiary for a dispensation in time. One couple was Heinrich Hestermann and Grete Geverdes from the bishopric of Paderborn, who before their marriage had the penitentiary certify that they could enter into the state of marriage, even though Grete had once been a sponsor of one of Heinrich's daughters from a previous marriage.⁴⁶ Pope Pius II showed himself to be especially strict with *petentes* who wanted to receive dispensation from an impediment of *cognatio spiritualis* after their marriage. More than all of his successors, the Piccolomini pope got personally involved with the conferral of pardons at the penitentiary. A total of twenty times, he imposed on petitioners a penalty for their offense, along with the grace of absolution and dispensation. The penalty consisted of having them separated from table and bed for a period of one to four months or, in one case, having them fast.⁴⁷ This punishment affected only couples who had known of the impediment and thus contracted their marriages *scienter*. "Separation" meant that they were not to have sexual intercourse during this time and were to live under separate roofs.

As far as the frequency of the two *impedimenta* is concerned, the impediment of baptism (715 supplications) occurs four-and-a-half times more often than confirmation (158 supplications). Does that mean that confirmation played a lesser role than the administration of baptism in the religious life of Christians of that time? The holy years 1475 and 1500 stand out somewhat with thirty-nine (baptism) and seven (confirmation) and then fifty-one (baptism) and twelve (confirmation) cases, respectively, but otherwise no regularity can be recognized over the course of years. The distribution across the German dioceses once again proves to be more telling. The dioceses of the Rhineland and southern Germany are conspicuous for the great number of supplications about both impediments. The ratio be-

46. RPG 6.3688 (year 1480).

47. Schmutge et al., *Supplikenregister*, 84.



Graph 3. Frequency of Marital Impediments from Sponsorship at Baptisms (left bar) and Confirmations (right bar)

tween confirmation and baptism, however, is not consistent across the empire. The ratio comes to 1:25 (in total 3:75) in supplications from Cologne, 1:3 (in total 28:87) in Constance, and 1:2 (in total 32:66) in Augsburg. The low number of sponsorship at confirmation confirms the determination of liturgical historians that “confirmation was a widely neglected sacrament in the Middle Ages” (Arnold Angenendt).⁴⁸

Public Decorum

As was already common among Roman lawyers, the medieval canonists considered a broken engagement or a planned but not consummated marriage with the relative of a partner to be a marital impediment, a “quasi-affinity.” If a valid engagement or a contracted but not consummated marriage was dissolved, all blood relatives of the one person were prohibited from becoming the spouse of the other person. For the most part, the impediment arose in cases of a second marriage (with the first never having been consum-

48. Arnold Angenendt, *Geschichte der Religiosität im Mittelalter* (Darmstadt, 1997), 472.

mated) with a person closely related to the deceased partner. Canon law terms this impediment *impedimentum publice honestatis iustitiae*, an impediment of public decorum. In comparison to sponsorship at baptism and confirmation, the impediment comes up much less frequently in the supplications. Walter and Elisabeth from the bishopric of Utrecht identified this as their problem in great detail in their supplication of 1478.⁴⁹ They became aware of the impediment only after their marriage; it consisted in the fact that a certain Nicolas Petri, to whom Walter was related in the fourth degree by blood, had been engaged to Elisabeth but had passed away before the marriage was consummated. In another case of this sort, Stephan Dien from the diocese of Constance had pledged marriage to a Henrica *per verba de futuro*, but she departed this life before he could carry out the *copula carnalis* with her.⁵⁰ Afterward he married her mother and asked to receive dispensation from the impediment despite the marriage pledge made, but not kept, to the deceased Henrica. Considered purely by the numbers, the impediment of public decorum occurred in fifty-five fewer supplications than that of confirmation.

Ceremonial Oath

Another thing that counted as a marital impediment in the Middle Ages was a ceremonial oath or vow (*votum*) taken before witnesses; it prohibited the person making the vow from entering into an ecclesiastically valid marriage. In contrast, a simple oath that was pronounced during marriage did not dissolve it; a decretal of Pope Alexander III had already taught this.⁵¹ Since the pope was able to grant dispensations from oaths, we find in the register of the penitentiary some requests of this kind, such as that of Alexander Detrevent from Mainz, who had promised to become a monk but then had acted against his oath and entered into the state of marriage. He requested that the penitentiary commute his promise into "another pious work," which usually meant a pilgrimage or donation.⁵² After

49. RPG 6.1109.

50. RPG 5.1501.

51. X 4.6.3: "votum simplex impedit contrahendum, non tamen dirimat contractum."

52. RPG 4.1781 (year 1456).

the death of her first husband, Lady Anna von Rechberg, who came from a southern German family of the ministerial class, had vowed to enter an order.⁵³ Breaking this vow, the widow married again and begot children. She sought absolution from breaking the vow as well as dispensation to be able to remain in her marriage and, at the same time, to have her children declared legitimate. A young girl from Augsburg, Veronica Boeschin, apparently wanted a husband under any circumstance, and for that reason she took an oath to enter into a cloister if her parents had not married her off within the next two years. It must have taken a bit longer for the prime of life to set in for Veronica and for her to be able to sink into the arms of a man. She had to be absolved, therefore, of the transgression of her oath by the penitentiary. Requests of his kind usually came from women;⁵⁴ men did make vows, but more rarely. One of them, Heinrich Weinicker from Münster, was enraptured (the text reads *filocaptus*) with a certain Elisabeth Budde in such a way that he made a vow, but only to himself, never to marry another, even if she should die before him, if only he could make her his bride. He got his Elisabeth, but his happiness with her appears to have been less than perfect, for, when she died, he married a second time and, to be safe, to ease his conscience, he asked the penitentiary to absolve him for breaking his oath so that he and his second wife could henceforth live together as a married couple.

Relationship by Marriage and Consanguinity

According to canon 51 of the Fourth Lateran Council, couples who wanted to get married but were related by marriage or by blood in the fourth degree or less could not enter into marriage without a papal dispensation. Since this ordinance had been put in place by a general council, only the pope or a prelate commissioned by him could grant such a dispensation. Pope Clement VI (1342–52) had already assigned a general right of dispensation to Gaucelmus, the major penitentiary in those years. Letters of pardon for the third degree

53. ASV PA 42 fols. 244v–245r (July 7, 1493).

54. Veronica: RPG 6.1111 (year 1478). Other women: 3.2004 (year 1457); 6.1401 (1480). Men: PA 43 fol. 172v (year 1493); RPG 7.1612.

of physical consanguinity are known only from the days of the three-way schism after the Council of Pisa (1409).⁵⁵ In 1438, Pope Eugenius IV had conferred on the major penitentiary the *facultas ordinaria* to grant dispensations from the fourth degree of both types of kinship, regardless of whether the marriages were contracted secretly or not.⁵⁶ Calixtus III also included *cognatio spiritualis* in the common realm of dispensations.⁵⁷ Pope Pius II personally permitted a dispensation in the second and third degree of consanguinity in 1463. It was not until Sixtus IV (1471–84) that the powers of the major penitentiary were again summarized in a papal bull.⁵⁸ In it the Rovere-pope also authorized dispensations from *affinitas superveniens* in the second and third degree, but only *in foro conscientie*. As a result, all requests in the fourth degree and in the third and fourth degree were able to be signed *de speciali*, all requests in the third degree with the *fiat de speciali et expresse*.

The ordinary powers handed over to the administrator of the pardon office by Pope Sixtus IV on September 13, 1471 encompassed all forms of physical consanguinity in the third and fourth degree, *cognatio spiritualis*, and marriage after divorce.⁵⁹ The penitentiary conferred such dispensations in provisional form, charging the respective ordinary with checking on the information given by the suppliant. In still closer degrees of physical consanguinity (for example the first or second degree of an *affinitas superveniens*), the request for grace had to come before the pope himself and be signed with *fiat de speciali et expresse*, since the penitentiary did not possess ordinary power in such cases. Innocent VIII granted dispensation *de speciali et expresse* to Heinrich Schomeker from Münster, who, prior to his marriage with Hildgund, had also slept with her sister but claimed not to have known that this presented an impediment to marriage.⁶⁰

But how did simple farmers, honest craftsmen, and even the lower nobility of the time ever find out with whom and in what degree they

55. Göller, *Die päpstliche Poenitentiarie*, 1.1.113ff.

56. *Ibid.*, 1.2.43.

57. Text in *ibid.*, 2.2.2–3.

58. Second and third degree of kinship: RPG 4.697; text in Göller, *Die päpstliche Poenitentiarie*, 2.2.4–8.

59. The bull is edited in Göller, *Die päpstliche Poenitentiarie*, 2.2.4–8, here 5–6.

60. RPG 7.1165 (year 1491).

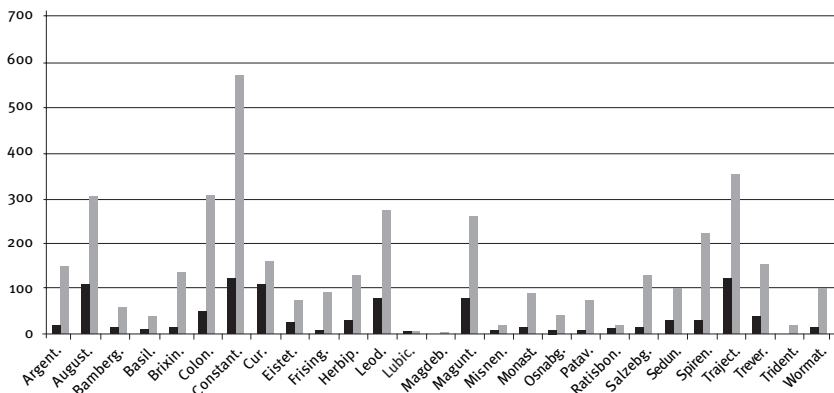
were related? The statistics from more than six thousand supplications registered in Rome give us only a half-reliable answer to this question. Even those couples who were aware of an impediment often could not name the exact degree of their connection. The content of several supplications suggests that a vague knowledge of some degree of kinship did indeed exist, but no exact information about the degree of the connection in question according to the requirements of the canon of the Lateran Council was possible. This situation applied to Heinrich Westermann and Margarete Böschin from Tannenkirch in the bishopric of Constance, "who indeed knew that they were related to another but not in which degree." Two couples from Augsburg were just as incapable of providing the exact degree of their consanguinity.⁶¹

A related question immediately follows: did the couples who claimed in their supplications not to have been aware of an impediment based on kinship always tell the truth? Two individuals from Freising claimed in their request for absolution that they had indeed known of the existence of a forbidden degree, "but the exact number was unknown to them." Their credibility, however, can be brought into question because they then claimed to have found out only later that they were joined to one another in the first degree of kinship by marriage.⁶² To be specific, that means that sexual intercourse with the sister or brother of one of the partners would have occurred. And this circumstance was supposedly unknown? Amidst all the suspicion about the suppliants' love of the truth, one can proceed from one point of certainty: through intensive inquiries and questioning of witnesses the ecclesiastical courts of marriage *in partibus* came to rather clear determinations about the relationships by blood and marriage of the couples who appeared before them, as will be brought out further below. Only through an inquiry about their consanguinity, which the official of Constance had ordered, Petrus and Elsinä discovered that they were related by blood not just in some degree but in the third degree.⁶³ False information did not pay if one did not want to risk being turned down for the absolution or dispensation sought.

61. RPG 6.373 (year 1473), and 670, 671 (1475).

62. RPG 6.2088 (year 1472).

63. RPG 6.745 (year 1472).

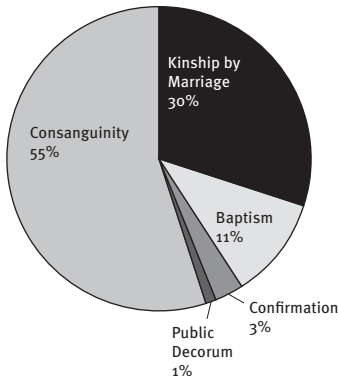


Graph 4. Cases involving an Impediment of Kinship (left bar: known at the time of marriage; right bar: unknown at the time of marriage)

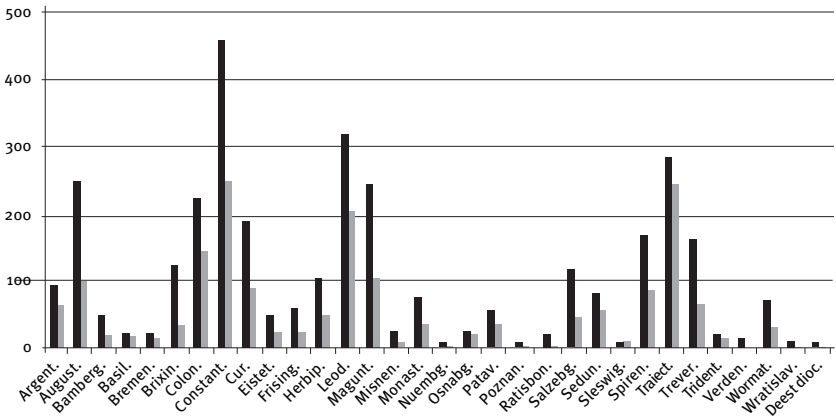
The precise numbers of the ratios between knowledge and lack of knowledge about an impediment of consanguinity appears as follows. In 1,043 of the 6,387 supplications, petitioners stated that they knew about an impediment between them before their marriage; the number of those who claimed not to have known of any *impedimentum* is almost four times as many (4,034). In 1,310 supplications there is no information on this question. In terms of geographical distribution, the same picture appears again as before in other data. Here the ratio is completely imbalanced (*scientes: ignorantes*), 1:1.5 in Chur, 1:2 in Regensburg, 1:3 in Augsburg, Eichstätt, Liège, Mainz, Meissen, Sion, and Utrecht, 1:4 in Constance, Würzburg, and Trier, 1:6 in Cologne, Münster, Strasburg, and Worms, 1:8 in Freising and Passau, 1:9 in Speyer, 1:10 in Brixen and Salzburg (cf. Graph 4).

The next diagram shows the distribution by percentage of all marital impediments mentioned in the supplications: the *cognatio spiritualis* (baptism 715, confirmation 158, public decorum 55), consanguinity (3,476), and kinship by marriage (1,867). In 116 supplications, the relevant information is missing.

In view of these numbers, the widespread view in the literature that consanguinity, relationship by marriage, and spiritual kinship would have played a small role or no role at all in the officialate



Graph 5. Distribution of Marital Impediments



Graph 6. Distribution of Biological Kinship by Diocese (left bar: by blood; right bar: by marriage)

courts must be labeled as incorrect.⁶⁴ Because episcopal jurisdiction simply was not responsible in cases of marital impediments, the officialate court had to transfer the decision in such cases as matters reserved to the pope, and the *petentes* had to turn to Rome.

64. Gaudemet, *Le mariage en occident*, 248 and Rudolf Weigand, "Zur mittelalterlichen kirchlichen Ehegerichtsbarkeit. Rechtsvergleichende Untersuchungen," ZRG KA 67 (1981), 213–47, here 231–32. Albert, *Der gemeine Mann*, 168. Charles

Incest, Adultery, and the Conjugal Debt

The rejection of incest, which today is grounded in many and varied socio-biological reasons, was deeply anchored in the consciousness of people of the fifteenth century. Many abstruse tales warned of incestuous relations; stories of incest engaged the attention even of the educated of the time. Albrecht von Eyb, a humanist and prebendary of Bamberg, told a frightening story at the end of his treatise *Ob einem manne sey zunemen ein eeliches weyb oder nicht* (*Whether a man may take a wife or not*) written in 1472. "A powerful, noble emperor" bore a son with his daughter; he was baptized with the name of Albanus and then given away abroad as a foundling. Later, after all sorts of adventures, he married his mother.⁶⁵

The word incest is regularly used in the supplications. What is to be understood by it? The canonists used "incest" to designate a sexual union of two persons related in the prohibited degrees. From every instance of sexual intercourse, regardless of whether the two were married at that point (*affinitas legitima*) or not (*affinitas illegitima*), an *affinitas superveniens* arose. Therefore, if a man slept with a woman, the *affinitas* arose between the man and all blood relatives of the woman; the man became related to a third person who was the blood relative of the woman in the same degree as the woman was. In the

Donahue, "The Monastic Judge: Social Practice, Formal Rule, and the Medieval Canon Law of Incest," *Studia Gratiana* 27 (1996), 49–69 writes on p.55 that "incest cases did not comprise a large portion of the marriage business of the medieval church courts."

Translator's Note: Donahue is making the point that the number of incest cases (i.e., cases pertaining to too close degrees of kinship) make up a smaller percentage of the total marriage cases before episcopal courts than other types of cases. He goes on (p.56): "The number of such [incest] cases . . . pales in comparison with the number of instance cases in which one party is seeking to enforce a marriage legitimately—as he or she alleges—entered into or to obtain a separation on the ground of adultery or cruelty, or in comparison with the number of *ex officio* prosecutions of fornication or adultery." The data provided below for the German realm (cf. especially chapter 4) confirm Donahue's point that suits seeking the confirmation of a marriage/the assignment of a spouse dominate the officialate court proceedings.

65. Eyb, *Ob einem manne sey zunemen ein eelichs weib oder nicht* (Darmstadt, 1993), 108–18.

course of the late twelfth and early thirteenth centuries, canon law had formulated an exact stipulation for the prohibition of incest on the basis of older conciliar canons and in line with the marital canons of the Fourth Lateran Council. In the *Liber Extra*, an entire section (title 13 of the fourth book) is devoted to the heading “on the person who conjugally knows a blood relative of his wife or spouse” (*De eo, qui cognovit consanguineam uxoris sue vel sponse*). The result of the details of these decretals based on decisions of popes Alexander III, Celestine III, and Innocent III was as follows: an *affinitas superveniens* made an engagement null and void, and the guilty party was prohibited from marrying, as the rubric of X 4.13.2 expressly states: “Affinitas superveniens per illicitum coitum dissolvit sponsalia de futuro, sed non matrimonium; et incestuosus contrahere non potest.” In similarly clear language, the rubric of X 4.13.6 explains: “Affinitas superveniens non dissolvit sponsalia de praesenti.” An incestuous offense after a valid contraction of marriage consequently did not dissolve an already existing marriage. The guilty party could, however, no longer demand sexual intercourse, the *debitum coniugale*, from his or her partner, and a second marriage remained forbidden for him or her after the partner’s death. The rubric for X 4.13.1 said: “Affinitas superveniens post matrimonium contractum, non solvit matrimonium, sed exactionem debiti impedit, et crimen incestus inhabilitat quoad matrimonium contrahendum.” Decretal law further stipulated automatic excommunication as punishment for incest.

How closely related could one be in order to still receive dispensation for a marriage from the pope? A few spectacular decisions deserve special attention. They demonstrate that unions of a very narrow kind resulted in separation. Johannes Wulfar and Elsa Dunberg from Würzburg had married (they do not say in which way) and also consummated the marriage in full knowledge that they were related in the first degree. Since their supplication was registered twice under the same date, a scribal error is out of the question: both times the words *primo gradu affinitatis* stand clearly in the register.⁶⁶ The two were not brother and sister; instead there was an *affinitas su-*

66. RPG 6.1284 and 1289.

perveniens between them. Translated into English, the supplication states that, prior to or during the marriage, Johannes had sex with Elsa's sister and/or Elsa had sex with Johannes's brother. They applied for *divortium*, which was approved in the second supplication by the major penitentiary and granted for them free of charge by the regent. Decisions of the penitentiary on the dissolution of marriage had been made in almost identical cases in 1469 in Utrecht, six years later in a case from Würzburg, and in 1477 in one from Augsburg. Affairs of this kind were apparently intolerable on ecclesiastical as well as social grounds in many regions. The wording of several dispensations from bastardy even occasionally expressly noted such an "impossible" union of the parents.⁶⁷

As we can realize in cases of kinship by marriage in the first degree, this impediment was caused by sleeping with the closest of relatives. A supplication of a couple from Waltpilch in the bishopric of Trier offers an especially dramatic example of this.⁶⁸ Johannes and Catherina, a widow, had contracted *sponsalia de futuro* and then slept with each other, allegedly without knowing that Johannes's father had already had sex with Catherina. Could Catherina really not have remembered? In this way an *affinitas* in the first degree now arose. When they found out about this impediment, they went to see the official of their bishop. He had witnesses interrogated on the matter, summoned the two to court, and commanded them, on pain of excommunication, not to sleep with each other any longer. The two could not, however, keep their hands off each other (*ineffranto lapsu libidinis ducti* is the Latin), moved to the diocese of Metz, where the impediment weighing them down was not known at all, and celebrated a formal marriage ceremony there, without the permission of their local priest from Trier, whereby they once again fell into automatic excommunication. At the time of their supplication in December 1472, they seem to have seen that according to canon law they could not remain married and thus asked for absolution from

67. Utrecht: RPG 5.1710; Würzburg: RPG 6.2589; Augsburg: RPG 6.2744 and 2088. Mention is made in dispensations from illegitimate birth in RPG 5.2612; 6.4364 and 6422.

68. RPG 5.2189 (year 1472; in the text erroneously identified as from Utrecht).

excommunication. The decision of the penitentiary's regent issued a formal approval. Given the lack of additional sources, we cannot say whether Johannes and Catherina remained together *ineffrenato lapsu libidinis ducti*.

Grants of pardon to continue in a marriage (and not just receive absolution and then separation) between suppliants who were joined to one another in the second degree of consanguinity (i.e. cousins), however, did occur. In these cases the Roman office of penance, confession, and pardon showed itself to be softer, granting absolutions and dispensations. In 1480, a couple from the district of Berchtesgadener Land in the archbishopric of Salzburg asked for a *littera declaratoria* for a marriage which, despite this impediment, had been contracted and consummated some time earlier (*olim*).⁶⁹ The Salzburg officialate court had most likely condemned them to separation, which they wanted to avoid. It is, however, questionable whether the officialate of Salzburg treated them justly after the process was, as usual, forwarded to it again. One can find four additional grants of pardons for so close a consanguinity in the register of Paul II and twelve in that of Sixtus IV.⁷⁰ In many supplications in which a relationship in the first or second degree existed between the couples and thereby, in the opinion of the *petentes*, the union should not be sanitized through a dispensation, they asked only for an absolution from the transgression of incest. Cases of this kind are found distributed across the entire period, even if not very frequently.⁷¹ A single example for this category may suffice: Johannes Hegin and Geltrud from the diocese of Constance had gotten married even though they knew they were closely related by marriage in the second degree. They suffered a crisis of conscience (*cum sana conscientia remanere non posse*), which prevented them from continuing to stay married. They asked for and received absolution from incest only after they had been separated.⁷²

69. RPG 6.3697.

70. RPG 5.441, 529, 1603, 1770, as well as RPG 6, Index s.v. 2. consang. grad., but an opposite outcome resulted in 6.3729.

71. See the cases in RPG 5.1277 (year 1466); 5.1915 (1471); 6.2744 (1477); 6.3224 (1481).

72. ASV PA 42 fol. 225r (year 1493).

The important sentence of decretal law, *affinitas superveniens non dirimit matrimonium*, which we have already met several times in the course of our exposition, is present as a word-for-word citation in many of our texts.⁷³ Even if one is inclined to ascribe this allegation only to the juristic knowledge of the proctors involved in the drafting of the supplication, the citation suggests that the awareness of fundamental guidelines of canonical marriage law had increasingly sunk in over the course of the fifteenth century. Couples in the wrong apparently did not know precisely that the decisive, legal difference lay in the time of the offense. If the husband or wife had gone to bed with a future brother- or sister-in-law before his or her marriage, the marriage was declared invalid. The Roman penitential court of course operated according to this norm as well. Conrad Bock and Anna Ramadlerin from Augsburg can serve as an example for the practice of the penitentiary in such a case. According to their supplication on May 4, 1477, the two had married knowing that Conrad had seduced and had intercourse with a sister of his future wife, Anna, before the marriage. They had no other choice than to separate because of the offense of incest. Only afterwards did the two receive absolution from the automatically ensuing excommunication.⁷⁴

In compliance with the above-addressed canons, the penitentiary proceeded differently in cases in which a partner had sinned sexually with a brother- or sister-in-law after the marriage had been contracted. This can be seen in the following supplication.⁷⁵ Mathias Wert from Constance had joined himself in marriage to Margareta Tantzlerin from Strasburg. After the wedding, “seduced by the devil,” as the text of the supplication puts it, Mathias gave himself over multiple times to trysts with a sister of his wife and had sexual intercourse with her. “Therefore,” the text explains following the decretal text verbatim in part, “he believes himself to be *inhabilis* in his

73. X 4.13.2, identical in content to X 4.13.1. The following supplications may be named as examples: RPG 6.2098 (year 1472, from Utrecht); 6.2745 (1477, from Constance); 6.3396 (1484, from Liège); 6.3468 (1472, from Basel); 7.1057 (1490, from Utrecht).

74. RPG 6.2744.

75. RPG 6.2745; a similar case is found in 6.2746.

marriage with Margareta." *Inhabilitas* refers to a weighty concept of canon law pertaining to guilt and consecration. Heavy consequences were bound to it for the person who became *inhabilis*.⁷⁶ Thus, a cleric who had incurred the *inhabilitas* through a crime, offense, or even by overstepping his jurisdiction could not receive any higher consecration or keep any benefice. He was, in short, struck with an occupational prohibition. For Mathias, the *inhabilitas* had the consequence that, with sure reference to the named canon, he remained married in the future to Margareta; nevertheless, on the basis of the *affinitas* arising from his mistakes, the church forbade him in the future to have marital relations with his wife or, as the supplication puts it, again with the words of the decretal text, "to render the conjugal debt to his wife." He now explained to the pope that, given his youthful age, he was unable to live continently and asked that he be able to demand the *debitum coniugale* from his wife and also perform it back to her at her request. The positive decision of the penitentiary's regent might in the end have resulted in Mathias and Margareta being permitted henceforth to give each other the gift of marital love.

For many couples who had incurred such an *impedimentum* through adultery in their close family circle, it seemed to be clear that an existing marriage was not dissolved on that count. The farther one gets into the fifteenth century, the more frequently the norm of the decretal X 4.13.6 is cited in the supplications.⁷⁷ After such a mistake, the couple or at least the sinning partner was forbidden to engage in marital relations. This principle was hammered into the heads of married people by those responsible for the care of souls and preachers of penance and during parish and diocesan visitations and thus can be considered to have been widely known. For this reason married people in the wrong regularly entreated, "since they could not live continently because of their young age, for the per-

76. On this point, see Stephan Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX. Systematisch auf Grund der handschriftlichen Quellen dargestellt* (Studi e testi 64; Vatican City, 1935), *passim*.

77. As one example of many, RPG 6.2088 (year 1472): "*affinitas superveniens non dirimit matrimonium*." In the rubric, the words *sponsalia de praesenti* appear instead of *matrimonium*.

mission to render the conjugal debt and demand it from their husband or wife."⁷⁸

This was precisely what the supplication of Heinrich Schuter from the county of Seyn in the bishopric of Trier was about.⁷⁹ Prior to 1478 he had married the apparently not-so-very-young Meckel Popp. At this point Meckel was certainly not a virgin anymore, because she already had a daughter from a previous marriage. Heinrich repeatedly went to bed with this step-daughter after he had married Meckel. According to the canons explained above, after this transgression he could no longer call for the *debitum coniugale* without a papal dispensation, as either his wife knew or his confessor might have explained to him. He thus asked the curia for absolution and dispensation in order to be able to continue in his marriage with Meckel, since he "could not live continently for the rest of his life because of his youth." The regent of the penitentiary showed consideration and granted Heinrich the papal pardon.

The supplication of Jello Hayonis from the bishopric of Utrecht contains more exact information in relation to the rights and claims to the *debitum coniugale*.⁸⁰ He professed to the papal penitential court that he had married his wife of the time clandestinely *per verba de praesenti* and was not aware that he was automatically excommunicated through the secret marriage. Over and above this, Jello later had had sexual relations multiple times with his wife's sister, "without his wife's consent," as the supplication notes, as if adultery with the blessing of his wife would not have been adultery at all. Was it common in Friesland, where the man lived, to permit one's partner to have extramarital escapades? Whatever the case, Jello had in any event all kinds of things to answer for: excommunication, adultery, and incest. He could not avoid the trek to Rome, although it is not stated who had prevailed upon him to do so, the official or "only" his conscience. Jello and his proctor knew canon law, however, and cited the above-mentioned decretal, "A relationship ensuing later does not

78. RPG 6.2098: "petit ... quod uxori sue potest debitum reddere et illud ab ea exigere."

79. RPG 6.2877.

80. RPG 7.1057.

separate an existing marriage." The request directed to the pope was in this case very refined. The woman asked to be absolved of the excommunication for the clandestine marriage, as did Jello; moreover, they both wanted to remain together. Jello had additionally become guilty of incestuous adultery, and for this, according to canon law, he could no longer live with his wife. He successfully expressed his desire "to be able to perform the *debitum coniugale* for his wife at her demand and at the same time to be able also to demand it from her."

As noted, the distribution across time of the supplications concerning the *debitum coniugale* proves to be just as illuminating. The problem appears in the register of the penitentiary in total only thirty times between 1455 and 1492.⁸¹ The first time a supplication from the German empire speaks of the "mutual conjugal debt" is in a supplication from Lübeck from 1455.⁸² A couple bearing a spiritual relationship asked for absolution and dispensation and, in addition, "to be able to give and request the debt." The next "German" case comes into play only in 1465 and concerns the married couple Konrad Scheyt and Anna Schmalczlin from Freising.⁸³ In the 1470s the supplications in which the right or duty for marital intercourse is a theme become more frequent; they come from all the dioceses, especially from Utrecht (six), and from Liège and Constance (four each). The problem is constantly named by the petitioners. One may deduce from this that, in serious marital transgressions like adultery and incest with a close relative, the parish priests did not absolve their confessional children but referred them to the episcopal officialate courts, which prohibited the guilty party at court from demanding marital relations. This serves as a further indication that in the last quarter of the fifteenth century the church increasingly interfered in the most intimate area of married life.

81. The supplications that mention the *debitum coniugale* are RPG 3.1717; 5.1089; 6.582, 2098, 2387, 2745, 2746, 2864, 2877 (relations with the daughter), 2890, 2934, 3157, 3227, 3271 (here it reads *amisit ius*), 3304, 3387 (a deacon *reddat debitum petente muliere*), 3396, 3468, and 3692; 7.1057, 1510, 1875, 1892, 1929, 2014, 2171, 2455, 2529, 2556, and 2615.

82. RPG 3.1717.

83. RPG 5.1089, cf. below, chapter 3.

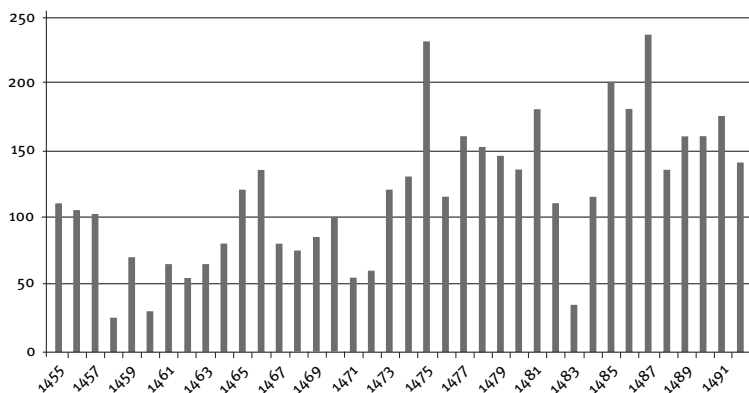
Legitimization of Children

We have already mentioned on several occasions that petitioners beseeched the pope for a marital dispensation as well as the legitimization of their children. Why did this occur? The request *cum legitimatione prolis* stands at the end of more than half of all the supplications (4,906 out of 6,387). This was the case since, according to the Lateran decrees, children stemming from a marriage that did not conform to canonical regulations counted as illegitimate. Yet, legitimate birth formed an important prerequisite for a career in almost every activity at that time. It was required for assuming an inheritance or for becoming a master in a trade as well as for higher consecration and for the obtaining of ecclesiastical benefices. A large number of requests for dispensation from the stain of *defectus natalium* that came to Rome from the territories of the German empire were intended to lay aside this impediment to consecration.⁸⁴ Besides the pope (for the ecclesiastical realm), based on the model of Roman law the emperor could also declare someone legitimate. Marriage law offered still another possibility to legitimize an illegitimate birth, getting married in quick order. In the technical language of canon law, this was called *matrimonium subsequens*, but its results for the status of the previously born children were not definite. This is shown by a supplication of the cleric Heinrich Slepser from Cologne.⁸⁵ Heinrich had a single woman named Elisabeth for a mother; his father, Johannes, was a cleric, whose ecclesiastical rank is not stated. In order "to procure the status of a legitimate child" for their son, Elisabeth and Johannes had married in secret. Why did their son, Heinrich, make a supplication to the pope? He asked for a papal *littera*, which would certify that he had received the status of a legitimate child through the *matrimonium subsequens* of his parents. Then nothing more would stand in the way of receiving a higher consecration and ecclesiastical benefice.

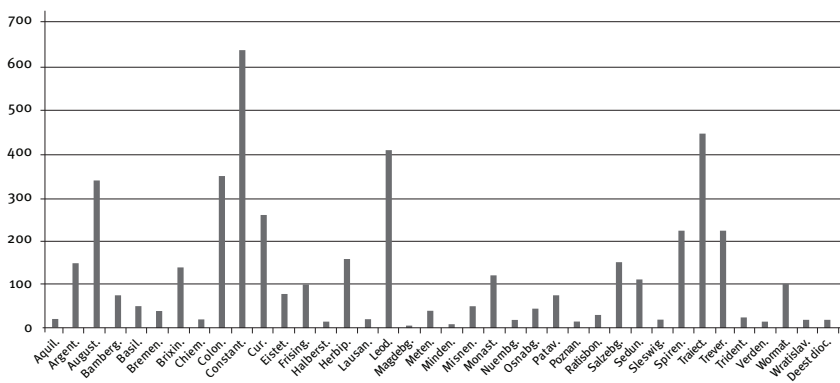
The distribution over time of requests for the legitimization of

84. Schmutge, *Kirche, Kinder, Karrieren: Päpstliche Dispense von der unehelichen Geburt im Mittelalter* (Zurich, 1995), passim.

85. RPG 6.3819 (year 1484).



Graph 7. Legitimization of Children



Graph 8. Legitimization of Children by Diocese

children in the registered supplications clearly shows that the request for this pardon grew more frequent towards the end of the fifteenth century. Of interest for regional history is the distribution of this request across the individual dioceses of the empire. Once again, the southern and western German regions stand out. The proof of legitimate posterity was considered to be absolutely essential in these densely populated regions with tight social controls; the competition

for the available resources and positions in the church as in the secular realm was felt here in a special way.

Marriage Pledges, Clandestine Marriage, Marrying as a Process

After this brief survey of canonical prerequisites for a “legitimate marriage” and the sketching of the most important marriage impediments, we should present in short form what the penitentiary supplications show about how a marital union finally came about through various ceremonial and ritual acts. Before the Council of Trent, it was not compulsory to get the church’s blessing for a marriage.⁸⁶ Just as today, so also in the second half of the fifteenth century, it was common to make a marriage pledge visible to the outside world through a sign, as a rule the giving of a ring (an “engagement ring”). Thus in Mainz a man and woman exchanged rings as a sign of their engagement.⁸⁷ In Trier a virgin understood the ring given to her at New Years’ as evidence of a promised marriage. She asked the man “whether he had given her the ring with the intention of later marrying her.”⁸⁸ The Latin word for this is *subarratio* or, as a verb, *subarrare* (to pledge, to get engaged). The fourth finger was called the *anularius*, ring finger, already in 1462.⁸⁹ Most of the time, based on biblical example, the ceremony accompanying the marriage arrangement involved the drinking of wine. This was even the case in the princely bishopric of Freising in beer-drinking Bavaria, in the rising market region of Mittenwald, which the Venetians would make into their trading center in the central Alps in 1485. Ulrich Steger lived there with his daughter, Anna. One fine day Gaspar Runllinger came for a chat at Ulrich’s house. After a while the lord of the house offered Gaspar his daughter to take as a wife, to which Gaspar replied that he would gladly take Anna as a wife. The father thus promised him in the presence of several witnesses at hand that he would lead his daughter to the marriage altar. After that, “according to the custom of the land,” as the supplication says, he had wine brought

86. Göller, “Walter Murner,” 191.

88. RPG 6.3712 (year 1480).

87. RPG 8.90 (year 1490).

89. RPG 4.1479.

by in order to celebrate the engagement. Gaspar extended a glass to his bride and Anna reciprocated by giving her bridegroom wine to drink, which all occurred in the presence of witnesses. In fact, no marriage later came of this “engagement,” but, following the example of the wedding at Cana, even in the classic land of beer, it was wine that belonged to an agreement of marriage.⁹⁰

The central act of the marriage ceremony itself consisted of the bride and bridegroom taking each other’s hands and declaring their will “I take you as my husband/my wife” before witnesses. This first element, which was in no way always undertaken by a priest, is illustrated in fine fashion in the case of a forced marriage in the year 1439, where the supplication says that those enforcing their will—laypeople, relatives of the woman—had compelled the couple to take each other’s hands as a sign of contracting the marriage.⁹¹ The declaratory act before witnesses had to follow because otherwise, under circumstances of a later denial (in most cases by the man), the intention to marry could not be proven. The declaratory act, which in well-to-do or noble families was often preceded by a proper marriage contract written at the end of long negotiations, was expressed verbally. The words could be spoken with immediate effect, in which case the expression *per verba de praesenti* appears in the supplication, or only for a (sometimes more distant) future, in which case we read *per verba de futuro*. A marriage contract *per verba de futuro* corresponds roughly to an engagement in our own day. The declaration of intent to marry someone was in any case binding, but could be lifted by the pope (if no *copula carnalis* had as yet occurred). The supplication from 1477 of Gaspar Marschalks from the Frankish knightly class of Pappenheim offers a fine example for such a declaration of the intent to marry. Gaspar had exchanged the following words with a Countess Katharina im Sagers from the diocese of Zagreb: “When I marry, I will take you and no other as my wife,” while Katharina promised him, “I will only marry you and no other.” This arrangement did not come to a full-fledged marriage; instead Gaspar pursued an ecclesiastical career path and became a cathedral canon in Eichstätt.⁹²

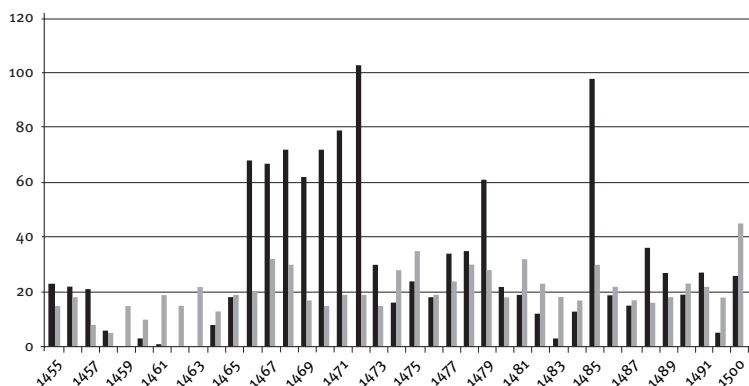
90. RPG 5.2154 (year 1472).

91. RPG 1.207.

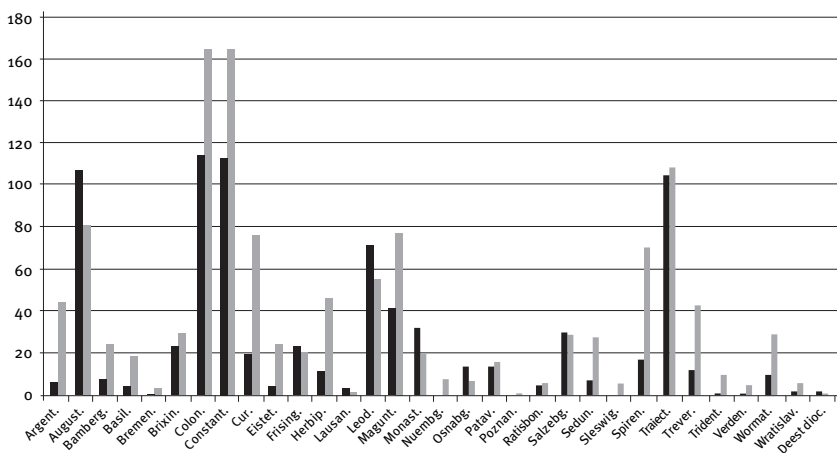
92. RPG 6.3615 and RG 9.6255.

When a man and woman made a pledge of marriage *per verba de praesenti*, for the most part they also soon thereafter performed the sexual act (with or without a preceding banns of marriage). Even after a marriage pledge *per verba de futuro*, many couples immediately went to bed with one another in defiance of the church's prohibition of it. Many supplications explain that, soon after the pledge, the couple slept together, i.e. committed the *copula carnalis*, whereby the marriage became tainted but valid all the same. Not a few couples lived for years together after making the marriage contract, proclaiming the affiliated declaratory act, and sleeping together, which established the indissolubility of the marriage, had children, and gave little care for the banns or ecclesiastical celebration (*sollemnisatio*). In accord with the Fourth Lateran Council, the supplications called such a marriage "clandestine;" in accord with the will of the conciliar fathers, it was supposed to incur automatic excommunication, but this prescription was not followed in every part of Christendom. In the supplications of the penitentiary, the opposite, a marriage occurring in public (*publice*), signified that a couple had carried out all of the actions called for by the church after the banns of marriage (with the exception of the *sollemnisatio*) and had established a valid, indissoluble marriage. When a marriage was described as clandestine, that did not mean that it was contracted in the hayloft or in secret. There could have been dozens of people, including clergymen, present; it was simply that no ecclesiastical banns had occurred beforehand and no ecclesiastical celebration (*sollemnisatio*) afterwards. Graphs 9 and 10 show the temporal and geographical distribution of marriages contracted *publice* and *clandestine*. From the distribution of years, it becomes apparent that, almost exclusively, couples that had entered into a clandestine marriage were the ones that made supplications during the pontificate of Pius II (1458–64). The supplications of couples that had clandestinely married also predominate in the Holy Years 1475 and 1500 as well as from 1481 to 1484.

The distribution of clandestinely and publicly contracted marriages in the German bishoprics demonstrates special regional particularities. In Augsburg, Liège, Münster, and Salzburg, the number of the clandestine marriages in the register exceeds the number of those publicly agreed upon *per verba de praesenti*. In reading the supplica-



Graph 9. Public (left bar) and Clandestine (right bar) Contraction of Marriage



Graph 10. Clandestine (left bar) and Public (right bar) Marriages by Diocese

tions, one cannot resist the impression that most couples that had married clandestinely knew about an existing impediment but did not admit it. Theoderich Wilinck and Elsgina from the city of Bocholt in the bishopric of Münster in fact claimed that they had married clandestinely without being aware of the existing consanguinity between them; they lived together for a long time as a married cou-

ple and had children. Only when they “wanted to carry out the *sollemnisatio* in the church, as is the custom of the land, did the impediment become known to them,” or so they claimed.⁹³ At that point they were forced to seek a dispensation in Rome. If they had admitted, however, to having known about the impediment when they got married in secret, the proceedings in all probability would have been more expensive for them. They would not have gotten around a penalty in the form of a composition.

The Wedding Mass and *Sollemnisatio*

Against the background of today’s secularized wedding ceremonies and the church’s ceremonial wedding Mass, the proceedings of the *sollemnisatio* are especially difficult to explain. Which ceremonies, actions, and legal acts are concealed in the term? At what point in the process of contracting a “public” (*publice*) marriage did this event stand, which can best be translated with the term “ceremonial marriage celebration” or simply be transliterated as “solemnization”? When in the chain of actions that led to a valid marriage did this ceremony take place? Certainly it took place after the announcement of the marriage banns (*bannus*) and the marriage pledge and in most cases also after the *copula carnalis*. One can gather from numerous supplications that couples pledged marriage to one another *per verba de praesenti*, physically consummated the marriage, and only after the intervention of ecclesiastical authorities observed the *sollemnisatio*. This act was certainly observed before the church, in cathedrals in front of the so-called bridal tower. Johannes Boide and Maria from Cologne had secretly pledged marriage to one another without knowing about an impediment and had slept together. “Only when they wanted to step up to the church for the solemnization,” their supplication says, “did they find out (through the banns) that they were related by marriage in the third degree” and make a supplication then for an absolution and dispensation.⁹⁴

Another couple from Cologne, Talginus and Truda, had no idea

93. RPG 7.1071 (year 1490).

94. RPG 6.386 (year 1474).

about a *cognatio spiritualis* between them (Truda's father had served as godfather to Talginus). They "gave each other the marriage pledge, slept with one another, and had children." In their supplication, they asked for a dispensation to be able to stay in their "presumed marriage" (*praesumptum matrimonium*) and "solemnize it in the presence of the church" (*in facie ecclesie sollemnizare*).⁹⁵

We find extensive evidence in the supplications for the supposition that a *sollemnisatio* could take place as late as several years after two people had been living together as a married couple. A couple from Utrecht stated in their supplication registered in 1456 that they had had a relationship with one another for a long time, from which relationship children had also come into existence. Only after some time did they clandestinely contract a marriage and this time around consummate it anew as a tainted albeit validly married couple. Then they asked for absolution (for secretly contracting the marriage) and for dispensation to be able to remain married and celebrate the *sollemnisatio*.⁹⁶ Even in Cologne, as we can gather from these examples, it appears not to have been unusual to make the pledge to marry, then consummate the marriage, and only later celebrate the *sollemnisatio*.⁹⁷ Apparently the wedding celebration was put off especially when the bridal pair were aware of an impediment, as becomes clear from the text the supplication of another couple from Cologne. Heinrich and Margarete from Altena were clear on the fact that her father had been Heinrich's godfather, "but they did not consider this to be a problem," completed the marriage contract and slept with one another, "but because of this impediment they did not yet observe the ceremonial *sollemnisatio*." They apparently only celebrated it once the papal dispensation arrived. At that point no parish priest could deny a wedding "in the presence of the church" any longer.⁹⁸

A curious story reported in a supplication from 1493 shows how weakly the wedding celebration, the *sollemnisatio*, required by the church was anchored in the consciousness of Christians at that time. Two nobles born into the knightly class from the diocese of Cologne, Heinrich Stail and Margarete von Wilaick, had contracted a marriage

95. RPG 6.561 (year 1475).

97. Also RPG 4.17 (year 1459).

96. RPG 3.1835 (year 1456).

98. RPG 3.1683.

long before (*dudum*) and publicly (*publice*, which did not include the *sollemnisatio*, as we will see in a moment) and had lived “together as a real married couple.” “For certain and legitimate reasons,” the text of the supplication continues, “they had put off having their marriage solemnized in the presence of the church according to the custom of the land.” But if they had to observe this ecclesiastical marriage celebration, apparently after years of living together, “then they would have been made an object of the people’s ridicule.” “They were considered to be genuine and legitimate spouses by all their acquaintances,” the text carries on, “especially since the *sollemnisatio* adds nothing to the validity of the marriage and their neglect of it does not invalidate their marriage.”⁹⁹ These are important statements on the value of the *sollemnisatio* for contracting a marriage. The couple asked the pope for a declaration that they did not have to undertake the *sollemnisatio* “irrespective of the custom in their homeland” and additionally could not be forced to do so by anyone, since their marriage “had been contracted correctly and legitimately.” Since the supplication was approved with the usual signature *fiat de speciali*, Rome seems to have endorsed this position. Who might have caused the two nobles to take this step? Their parish priest, who wanted to compel them against their will to do the celebration in the church? The official of Cologne, who was notified about the couple living together “uncanonically”? Envious neighbors or fellow nobles? One cannot be sure.

Apparently a connection existed between the announcement of the banns and the *sollemnisatio*, inasmuch as objections in response to the banns also prevented a ceremonial celebration. Marriage supplications of the penitentiary report cases of successful objections, which show that the measure prescribed for Christendom by the Lateran Council was able in time to exercise an effective function of social control. Thus, a certain Anna had raised an objection against the intention of a couple who had already lived together and had children and now intended to observe the *sollemnisatio*. She claimed that, at the age of four, she had contracted a *matrimonium per verba*

99. ASV PA 42 fol. 249r: “sollemnisatio ad validitatem matrimonii nihil conducit neque non facta illud invalidet.”

de futuro with the man. An engagement arranged by the parents certainly existed. Her protest was successful: the priest in charge prohibited the *sollemnisatio*, and as a result the couple had to turn to the pope.¹⁰⁰

A supplication from France leads to further insights in this matter. Benedict Perillion and his wife Thomina had made a pledge of marriage *per verba de futuro* and after that had had sexual intercourse many times.¹⁰¹ When they wanted to legalize the *praesumptum matrimonium*, as the proctor correctly labeled their relationship in the supplication, which necessitated that the banns of marriage be read out twice in their parish church according to the custom of the region so that possible objections could be brought forward, a prostitute from the parish of Trehel in the diocese of Avranches came forward with the malicious intention of preventing the marriage of the two. She claimed that she was related by blood or marriage to Thomina in the second and third degree; since Benedict had been her "client," he and Thomina consequently could not marry because of this *affinitas superveniens*. In order to give the claim the necessary weight, she took an oath about her claim before the diocesan official, always with the intention, as is to be gathered from the words of the supplication, of preventing the marriage. And although Benedict swore the opposite before the same judge and also with an oath, the official prohibited the couple from ceremonially celebrating the marriage in the church and forbade them to keep up their marital relationship with each other in the future. Benedict appealed this judgment, which he found to be unfair, to the archiepiscopal curia in Rouen. While his case dragged on there without reaching a decision, Benedict and Thomina continued to live together and had children, apparently without being held responsible for this in any way by the official of Avranches, who had expressly forbidden it. Endeavoring to legalize their relationship, the two finally turned to the penitentiary and, citing the formula "*Licet non credat nec recolat*," disputed all the infamy-causing claims of the lady of dubitable trade, for which, they claimed, there also were no witnesses. If, however, they had

100. ASV PA 47 fol. 213r (year 1498, from the bishopric of Vilna).

101. ASV PA 47 fols. 207r–207v.

been separated, many *scandala* would have arisen. As a result, they asked for permission to be able to have their marriage ecclesiastically celebrated and for the legitimization of their children born in the meantime. The regent of the penitentiary authorized this for them in the summer of 1498 on the basis of his ordinary powers.

In view of the tens of thousands of supplications for marriage dispensations in the register of the penitentiary, one may accept with certainty that couples everywhere in Christendom in the fifteenth century were aware that, when an impediment existed, an ecclesiastical marriage was not permissible without papal dispensation, and a *sollemnisatio* could not follow. For example, Ulrich and Adelheid from the bishopric of Constance were in no uncertain terms aware of this prescription and for that reason reported in their supplication that they “could not undertake the ceremonial celebration” because of a spiritual relationship.¹⁰² Besides the banns of marriage obligatory since 1215, the church had found in the ceremonial celebration (*sollemnisatio*) an additional means to keep marriage under its control, even if it was not fully secured in law until the Council of Trent. There could be no talk of marriage as a “worldly thing.”

102. RPG 3.1784 (year 1456); similar formulations in RPG 5.132, 135, 140, 147, 177, 517, and 596.



Stories from the Roman Supplications

In a famous decretal with the incipit *Per venerabilem* (X 4.17.13), Pope Innocent III (1198–1216) had determined that the successor of Peter was empowered, even obligated, to interfere everywhere in a regulatory and penal way where there was sinful conduct (*ratione peccati*), even when the sinners were emperors and kings. One should not be surprised, then, that the bishops, the successors of the other apostles called to support the pope (*in partem sollicitudinis*), and the spiritual courts assigned to them stigmatized, charged, and endeavored to do away with all bad behavior in the field of marriage and family. To this end, since the late thirteenth century, there existed in every diocese of the empire at the episcopal courts, called the officialate courts because the presiding judge was the *officialis*, specific divisions for marriage processes. In fact, the episcopal courts in the late Middle Ages were chiefly occupied with conducting processes in marital matters. With the canons of the Fourth Lateran Council, the papal decretals contained in the fourth book of the *Liber Extra* promulgated in 1234, and the instruments of the romano-canonical process, the church possessed fixed guidelines as to what the procedures in such marriage processes were to be. Moreover, judges (“officials”) schooled in canon law officiated at the episcopal officialate courts, supported by a host of notaries and commissioners or commissary

judges, who were responsible for important tasks in the course of a process. They questioned the summoned witnesses, occasionally numerous, drew up the record of those examinations, composed interim reports, and also wrote up the final judgment for the official. Thus, in most German episcopal sees in the fifteenth century, an agency at the officialate court employing many people ("officiality") had come into being. Approximately thirty individuals worked at the officialate court in Basel, at least fifteen in Chur, at least twenty-one in Constance.¹ Unfortunately the archival transmission of the officialate jurisdiction, which in several dioceses, for instance in Chur, Eichstätt, and Freising,² was subject to the vicar general and in others, as in Regensburg, to the cathedral chapter, is only preserved in pieces in the German empire.³ For that reason, this chapter will investigate what information about the diocesan marriage processes can be gained from the supplications of the penitentiary.

How a Canonical Marriage Process Could Begin

How did a legal process in marital matters get launched *in partibus*? In general one must state that everywhere the instigation corresponded to the guidelines of canonical procedural law, regardless of whether a process was pursued through a litigation contest or only a shortened, summary procedure and thus a faster and cheaper one for the parties. The sources from the penitentiary possess, therefore, not a small value for legal and social history because only a few records of processes exist in German archives. Since a marriage process

1. These numbers come from Albert, *Der gemeine Mann*, 68–74.

Translator's Note: On the officialate courts, the role of the official, and the various legal professions, from notaries to proctors, cf. in English James A. Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts* (Chicago/London: University of Chicago Press, 2008). See especially pp. 137–51 for a helpful introduction to officials (or officials-principal) and officialate courts (or consistory courts). The work of proctors is discussed in detail in chapter 8.

2. On this point see Ingeborg Bucholz-Johanek, *Geistliche Richter und geistliches Gericht im spätmittelalterlichen Bistum Eichstätt* (Eichstätter Studien 23; Regensburg, 1988).

3. On the jurisdiction of the officialate court in Basel, Chur, and Constance, cf. Albert, *Der gemeine Mann*, 65–100. On Regensburg, cf. Deutsch, *Ehegerichtsbarkeit*, 61–142.

pursued *in partibus* preceded the supplication registered in Rome, the supplications contain valuable details about its content and course.

In accord with the general claim made by the church to be entitled to correct morals (*correctio morum*), the episcopal courts became active either upon a charge or by their own initiative. If an official found out that a couple was not living together “in a legitimate marriage,” he summoned the man and woman to court. There the accused were questioned and their statements checked through witnesses from their families or parish, and all statements were recorded.⁴ At the end of the process, after gathering all the evidence, the official rendered a definitive judgment (*sententia definitiva*), which had to be drawn up in written form. In their supplication from 1490, Simon Kraus and his wife Margarete confirmed that in their case the marriage judge of Eichstätt had served this judgment to them.⁵ If an existing impediment between the spouses was determined in the course of a process at the officialate court and its dispensation was reserved to the pope, the judgment in most cases prescribed marital separation (*divortium*). From the days of Innocent VIII (1484–92), one also repeatedly finds, under threat of punishment, the prohibition from continuing to live as a married couple after the *divortium*.⁶ Obviously many couples neither wanted to nor were able simply to give up their married life together, for very understandable, practical reasons. What was supposed to happen to children, house, farm, and workshop? Several supplication texts indicate that the couple had received advice from the officialate court that they should endeavor to get a dispensation from the apostolic see. The ordered separation from table and bed was in effect only until the *littera* with the dispensation had arrived from Rome. Mathias Lonti and Emelina Howes had received a recommendation of this kind in 1468 from the episcopal court in Bamberg.⁷ A couple from the bishopric of Leslau was advised of the same thing

4. RPG 6.747 (year 1476, from Constance): “officialis partes coram se vocari fecit, quibus auditis hinc inde propinquis.”

5. RPG 7.1131 (year 1490): “per suam definitivam in scriptis latam sententiam.”

6. E.g., RPG 7.495 (year 1487): “[officialis eos] ab invicem separavit et ne de cetero cohabitarent sub penis in inibuit.”

7. RPG 5.542: “eos separavit, quousque cum ipsis esset per sedem apostolicam dispensatum.”

by their ordinary in 1471.⁸ Both parties could make an appeal (*appellatio*) against the sentence of an official, to the bishop, to an archiepiscopal court, or to the pope.

As mentioned, the officials had intensive investigations undertaken in the course of a process in order to check the claims of the couple concerned. A supplication from Geneva clarifies what difficulties could arise in this context. A couple had asked the pope for dispensation because of a spiritual relationship and in response had received a *littera* from the penitentiary, in which the bishop of Geneva was instructed, as was routine, to check the claims and if necessary to make a decision on the conferral of the pardon. The supplication text says that the official in charge sent “several letters into the region from which the petitioners came as well as into many surrounding areas, where he had them read out. In them the people were instructed upon threat of punishment, if they knew something about the named impediment, to report this within a certain timeframe.” In this instance, the inquiry did not produce any satisfactory results—no additional information about the impediment came to light; the *petentes* thus asked the pope to rely on their statements alone.⁹

Since the cases that were handled in Rome had already been the object of a process *in partibus*, the petitioners always reported very precisely on the proceedings at the episcopal courts when this was required because the information was necessary for the penitentiary to make a decision. Let’s take a somewhat closer look at a few supplications from the years 1484–85 from this perspective. At her father’s command, the girl Dominica from a family of Misox belonging to the bishopric of Chur had been engaged at a young age to Alexander Cerri from Verdabio. Having come of age, she broke off the engagement by herself without having ever slept with Alexander, and she married another man with whom she then had children. Alexander, however, sued Dominica before the official of Chur and claimed she was his wife. The court decided in favor of Alexander, though, as the female suppliant wrote, “not lawfully,” perhaps because Dominica was summoned but did not appear before the court. In such a case,

8. RPG 5.924.

9. ASV PA 35 fol. 236r, Petrus Capre, December 7, 1486.

on formal grounds, because of contumacy—the defendant’s failure to appear—a court was accustomed to decide in favor of the present accuser without looking further into the matter. Dominica had also not appealed the decision, with the result that “it had come to have the force of law.” At that point, the only thing that remained for Dominica was the hope that the penitentiary would recognize the validity of her own marriage, “because marriages have to be contracted freely,” as the decretal of Gregory IX cited by the proctor in the supplication stated.¹⁰ Her case was referred back to Chur but cannot be followed any further because of the lack of surviving local documentation.

In the following story, another man sought to obtain his due before the officialate court, but his motive was exactly the opposite of Alexander’s. Balthasar Honer had gone to the court of the vicar general of Brixen and brought charges against a certain Brigida. In his opinion, Brigida had falsely spread around the claim that she had contracted a marriage with him. We can assume from this that the two had had sexual intercourse and that the woman wanted to deduce a marriage from that. Apparently Brigida could not bring forth sufficient evidence for her claim, so the court had certified to Balthasar that he was free and could marry another woman. There was also no appeal made against this judgment, and it thus became legally binding. Afterwards Balthasar married Margarita Crayn from the bishopric of Brixen in legally correct form and lived together with her for three years up to the time of his supplication. Since Brigida had refused to give up claiming Balthasar as her husband and also several other individuals maliciously claimed that he was married to her, he asked the penitentiary for a contrary declaration of his honor (*littera declaratoria*). The matter was, as usual, referred back to Brixen with the instructions to hear Brigida again and to check whether the judgment in Balthasar’s favor had been made correctly at that time. Only after that could Brigida’s demand be refused if the situation called for it.

When he was eighteen, the parents of Heinrich von Wilsberg from

10. The supplication is RPG 7.2451, the decretal X 4.1.29: “matrimonia debeant esse libera.”

a line of Alsatian lower nobility forced him against his will to marry Veronica von Fulxberg. "Only out of fear, which also can befall a brave man," the suppliant wrote, citing canon law, had he resigned himself to making the contract *per verba de praesenti*, which words Veronica had never uttered.¹¹ As soon as they were free from their parents' power, the two explained in full agreement and before witnesses that they did not agree to contract the marriage. Later Heinrich's brother, Kaspar von Wilsberg, began a relationship with Veronica that produced children. Because of the impediment of public decorum that had arisen in these events, Kaspar and Veronica found it advisable in 1485 to make a supplication to the pope for the grace to permit the marriage between them and to set Heinrich free, which was authorized by Rome in the usual way and after the local investigation.

In the supplications cited up to this point, the train of jurisdictions ran between an episcopal court in Germany and Rome. It began before the respective officialate court, went from there to Rome, and, after the judgment of the penitentiary, came back to the diocese of the suppliant once more. According to the theory of ecclesiastical procedural law, the archiepiscopal court was inserted as the first court of appeal between the diocesan jurisdiction of the official and the papal jurisdiction. This train of jurisdictions in the form of a chain of processes from the diocesan tribunal to the archbishop by way of appeal all the way to the papal penitentiary can be reconstructed step by step from a long supplication from the year 1485.¹² It all began when Hieronimus Binggor from the bishopric of Constance had charges brought against him before the official there by Margarita Trummeterin, likewise an inhabitant of the bishopric, on account of an alleged pledge of marriage. Both the accuser, Margarita, and the accused, Hieronimus, had themselves represented before the court by proctors. Whoever could afford it retained such proctors, legally trained counsel, in a marriage process. The result of this first procedure was that Hieronimus and Margarita were not found by the court to be married, and a written judgment to that effect was issued. After this *divortium*, Hieronimus contracted a marriage pub-

11. RPG 7.2465: "metu, qui cadere potest in constantem."

12. RPG 7.2468.

licly and *per verba de praesenti* with Agnes Schürcherin, with whom he had already previously had a relationship. When she got involved with him, Agnes was no longer a lily-white virgin. She affirmed this to him in the presence of her parents. She had previously lived with one or two men. For this reason the text of the supplication, from which all of this information comes, called her a *corrupta*. In the late medieval conception of marriage and family, the ideal of virginity played an eminent role.

One of Agnes's earlier lovers must have been a certain Hieronimus Keller, for the supplication mentioned that he brought a suit against her after her wedding with Hieronimus Binggor, also before the officialate court of Constance, on the basis of an existing marriage. A written judgment also resulted from this case, and it said that Hieronimus Keller and Agnes were "a legally married couple." This judgment did not become binding, since Agnes's proctor appealed the decision to the archiepiscopal court of Mainz, and at the time of the supplication in Rome, April 29, 1485, this *causa* before the official of Mainz was still pending. Then Agnes fell deathly ill and wanted to ease her conscience on her deathbed by confessing that Hieronimus Binggor was her true husband. The decision of the official of Constance in favor of Hieronimus Keller, against which she had filed an appeal in Mainz, was based on false testimonies of witnesses, as Agnes openly vouched for on her deathbed. One of the false witnesses came from the Swabian city of Herrenberg. After Agnes had been convicted of false statements in the original case, one witness, a certain Oriunda, had been condemned by the city court to public flogging, another witness had his tongue ripped out, and a third perjurer had his finger cut off. Agnes had wanted to be free from all this horrid history before her death.

But this episode fit for the stage was still not at an end. Hieronimus Binggor attributed his unhappiness with Agnes to the fact that, against the will of his dying father, he had not been consecrated as a priest. The father had vowed that both of his children were to enter upon the spiritual path of life. His deceased older sister had become a nun, as the parents had wished. After careful consideration and because he had gotten involved in the meantime with Agnes,

who was no longer a virgin, he now no longer wanted to become a priest but asked for permission to marry and bring children into the world. What decision did Rome make? The signature of the regent of the penitentiary said that the ordinary could decide the matter but should in any case clarify that Hieronimus could not become a priest.

From the cases mentioned up to this point, one could get the impression that officialate courts became active only when they were called upon by men or women seeking their rights. That is only partially correct, for in many dioceses the officials personally and inquisitorially prosecuted immoral behavior that ran against ecclesiastical rules, and they summoned sinners before their court in accord with Pope Innocent III's principle of *ratione peccati* cited at the beginning of the chapter. Investigations of the court were further initiated, as stated in chapter one, on the basis of objections after the public banns. Finally, parish ecclesiastics also appear to have made denunciations to the official. Many priests in charge of caring for souls, however, acted leniently towards couples in error. Thus, we learn from a supplication from Passau that a couple that was only vaguely acquainted with the existence of a spiritual relationship had contracted marriage without having gotten a dispensation "at the advice of their parish priest according to the tradition of the land." After seven years, the impediment became known (through whom and why is not said), and the two were pulled into court by the official so that a dispensation of the penitentiary became indispensable in order for them to continue their marriage.¹³ Most suppliants in fact stated that they had been summoned before the episcopal court by the official after an impediment burdening their marriage became known. The supplications almost never indicate in what way this information reached the petitioners and the ecclesiastical courts. They say, for instance, only "the rumor arose," "it came to their attention," or "the official of Constance was informed of the impediment," "when the provost's official got wind of it," "when the judges of Augsburg's curia were informed of the impediment," or even "it became known to the ordinary."¹⁴

13. RPG 3.1802 (year 1456).

14. The quotations are in RPG 7.409, 908, 1023, 1188, 1272 and 1294.

It is interesting to take note of the various ecclesiastical authorities who were involved in this process. Normally it was "the bishop and his official," as a supplication from Augsburg said, after they were notified of a marriage deliberately contracted clandestinely because of godparenthood and the "official had proven the spiritual relationship to them."¹⁵ For another couple from Augsburg, the proto-notary of the episcopal curia brought suit against the couple before the official.¹⁶ In the case of two married couples from Sion in Wallis, they "were summoned before the court of Sion at the initiative of the court proctor of the episcopal curia," while two supplications from Würzburg speak of the "judge of the consistory curia" as the accusing party, who then also rendered the decision for separation. A supplication of 1481 from Liège reveals that the couple concerned had employed a proctor, through whom the official commanded them "to abstain from mutual cohabitation until they had received dispensation from Rome."¹⁷

From the supplications of the penitentiary, one must draw the conclusion that, in all of German-speaking middle Europe in the fifteenth century, violations of canonical marriage law were viewed as delinquencies under the jurisdiction of the official and consequently were prosecuted by episcopal courts of their own initiative. In addition, one should accept as certain that the knowledge of the rules of canon law existed *in partibus* from Iceland to Cyprus, as comes out loud and clear from numerous investigations of various regions of Christendom. This knowledge was further extended and deepened in the cities, villages, and parishes with every *littera* that was handed down pertaining to a marriage dispensation from the penitentiary via the local bishop to the suppliants. In this way, the men and women wanting to get married learned in very precise form what the canonical impediments to marriage were and how they could be removed. Young men on the lookout for a bride were only too well aware that each instance of extramarital intercourse (*fornicatio*) was

15. RPG 6.1848.

16. RPG 6.443 (year 1474).

17. Sion: RPG 6.462 (year 1474); Würzburg: RPG 6.612 and 615 (year 1475); Liège: RPG 6.1566.

indeed sinful but did not automatically have to lead to an indissoluble marriage with the bedfellow. For their part, young women knew the exact dangers (apart from a possible pregnancy) that could result if they succumbed to the wooing of a passionate lover under the mistletoe or in the hay who subsequently did not shrink from later denying shamelessly before the court any intention of marrying.

Seduced Maidens Go to Court

Most of the time the seduced young woman who then was cheated out of a promised marriage had at her disposal only the road to the episcopal marriage court in order to make the attempt to save her honor or at least fight for a material compensation for the honor lost.¹⁸ Canon law referred to a verse from Exodus that prescribed either marriage together with a dowry or a payment of money after an incident of seduction. Apparently even many “simple” girls were familiar with this prescription and sought to use it. Nepurga, daughter of a cabinet-maker from the town of Anderhofen in the bishopric of Worms, had let herself be seduced by Wendelin Fleck and told all her acquaintances she had married him. Wendelin did not go before the ecclesiastical court but took other steps to escape the danger of a marriage potentially forced upon him (merely because of some sexual pleasure). He spoke with the woman’s confessor, telling him that he should “enlighten” her. Whatever the priest might have said to her, she must have been “enlightened” and was actually ready “to state under oath of her own free will before a notary and witnesses that she had never contracted a marriage with Wendelin in word or in deed.”¹⁹ She admitted that she had made the claim that she was his wife, which claim Wendelin denied, among the population “in order to extort some money from him and to prevent him from marrying another woman.”²⁰ What an astoundingly clear and rare admission! It

18. In the BGB §1300 that compensation is called a *Kranzgeld*.

19. RPG 7.2475 (year 1485): “deinde melius consulatus veritatem recognoscens et bona conscientia per eius confessorem ad veritatem rei instigata non compulsa neque seducta, sed libere et ex eius certa scientia publice coram notario publico et testibus recognovit medio iuramento, quod numquam verbo neque facto matrimonium contraxisset.”

20. Ibid.: “quod ipsa dixerat solum ad tribulandum ipsum exponentem et ad

is to be hoped that Wendelin also really paid her the monetary compensation, the *Kranzgeld*. The regent of the penitentiary in any case ordered the bishop of Worms to investigate the matter thoroughly again, which he certainly would have done. Within the limits of their legal means, ecclesiastical courts strove to be able to help seduced maidens at least in terms of the material side of their need, if necessary with the help of secular courts, the *brachium seculare*.

One can also study the precarious results of sexual intercourse obtained through a dishonest promise of marriage, as in the story just told, in a still less pleasant but typical example from Mainz in 1490. In this case the ecclesiastical court was invoked. Its resolution went in another direction, but the seducer also had to pay in this case. Stephan Seupler had raped a virgin named Elisabeth.²¹ At the time, Stephan was a simple cleric. After the incident, Elisabeth dragged him before the marriage court of Mainz "because of an allegedly contracted marriage." Before the process had come to a conclusion, Stephan fled to Rome and had himself ordained a priest there, presumably without the required permission of his bishop. That appears to have been a favorite practice of young clerics in order to escape the lot of marriage, because, if a cleric had been consecrated a subdeacon, canon law forbade him to marry. In Mainz the process had been brought to an end in Stephan's absence with an outcome in Elisabeth's favor; the judgment proclaimed a genuinely existing marriage bond.

A few months later, when Stephan returned to Mainz from Rome as an ordained priest, he was seized at the initiative of Elisabeth's parents and friends and handed over to the bishop. He had him thrown immediately into jail and suspended him from performing all priestly functions. Then conversations with Elisabeth's family apparently took place through the mediation of his friends. These talks led to Elisabeth entering into a cloister while Stephan would give her the necessary "purchasing sum" out of his own assets.²² The two

extorquendum ab eo aliquas pecunias et impedimentum, ne cum aliqua alia contraheret matrimonium, prout in quodam publico instrumento desuper facto latius continetur."

21. RPG 7.2613: "flore destituerat et violaverat."

22. Ibid.: "eidem de portione conventa pro vite sue sustentatione providit."

apparently well-situated families concluded a contract to that effect. Stephan was not yet freed, however, from the episcopal prison. First he had to swear to the ordinary to enter into an order and even into the especially strict mendicant order of the Carmelites. Stephan felt very little desire to become a monk, but the only thing he could do to get out of prison was to take this oath. That was the occasion for his supplication, from which we get all the information mentioned. To be specific, Stephan did not want to become a mendicant friar, and definitely not a Carmelite, but rather wanted to remain a secular cleric and receive benefices. The *littera* issued for him by the penitentiary was delivered to the deacon of the cathedral church of Mainz, not to the bishop, because—understandably, given his experiences with the episcopal administration—Stephan considered the latter to be biased. We do not discover anything more about the outcome of this matter from Roman sources, and the corresponding acts from Mainz appear to be lost.

Seduced, single maidens were not the only ones to call upon the episcopal marriage court. We know from the officialate registers handed down in the archives *in partibus* and also from the supplications of the penitentiary that married women who had been cheated on also sought protection and help from the officialate courts. Ursula Schorpyrn from Fredenberg in the bishopric of Constance mentioned such a step in her supplication from 1486.²³ She had at some point married Heinrich von Arnsberg according to all the rules of canon law, undergone the marriage ceremony, and consummated the marriage. Because of her husband's repeated, overt acts of adultery, she later sought separation from table and bed before the official of Constance. The spiritual judge separated the two with the force of law "for the rehabilitation of table and bed." But with that we do not come to the end of the mischief. In the course of the legal process, it was discovered that Heinrich had not been able to marry in the first place, since he was a runaway Benedictine monk who probably had made his profession in the Swabian monastery of Ochsenhausen. Ursula had been swindled twice over! As a result, the *littera* of

23. RPG 7.2497.

the penitentiary was delivered to the abbot of Ochsenhausen. In it Ursula asked to be able to marry again, since “certain proofs in this matter were present” in the monastery. She was certainly referring to the list of sworn monks, which unfortunately is no longer to be found in the abbey. Ursula doubtless received the permission to marry another man if she wished.

Rome Removes Impediments to Marriage . . .

Though in this chapter I have spoken thus far in the first place of the activity of ecclesiastical courts, that should not obscure the fact that the initiative for clearing up an uncanonical condition or for removing a marital impediment—and especially the striving to have an excommunication lifted, which shut one off from the sacraments and going to church—lay in the interest of the couple themselves and also was sought after by them. Laurentius, named Bock-enlorenz, and his wife, Katharina, named Goltzkatrein, both from Alsace, knew nothing of an existing impediment when they got married. Later they found that they were related by blood in the fourth degree and could not remain married without a dispensation from the apostolic see. “They at once turned to the ecclesiastical court,” as is to be gathered from their supplication.²⁴ The bishop summoned witnesses, listened to them, checked their claims and those of the married couple, and came to the judgment that “it was to be tolerated (*toleramus*) that they stay married and have the marriage solemnized in the church.” The intelligent spiritual judge would certainly have advised them, not least for the legitimization of the children, to get a papal dispensation as well, which the two successfully did. The toleration of relationships that did not conform to canon law was also practiced in other bishoprics, as, for instance, in Freising.

A couple from Speyer, Flickenhans and Otilia, also took action in their own situation. They turned to the episcopal official when, after their marriage, they must have established that they were related by blood in the fourth degree.²⁵ The spiritual judge accepted the evi-

24. RPG 6.1983 (year 1484).

25. RPG 6.1991 (year 1484).

dence for the impediment and separated the two in a proper procedure. In his recorded sentence, he also gave them the permission to marry again, with other partners. The two did not want to separate, however, and successfully made a supplication in Rome to be able to contract their marriage to each other anew. On the same day, another couple from Speyer, who had employed the same proctor, received permission from the penitentiary to be able to marry again after a separation imposed on them by the same official.²⁶

... While the Episcopal Official Separates Marriages

The supplications investigated up to this point show that bishops and officials were intensely keen on following canonical rules for marriage in their dioceses. For a long time, courts at a lower level, the synodal courts, “a kind of court of custom at the parish level,” also served the church in the control of the moral behavior of their faithful. There laypeople, the synodal lay assessors, also sat in judgment over other laypersons. Their chief task was of a disciplinary sort; they were supposed to “announce violations of ecclesiastical prescriptions by those in the parish, which then incurred monetary penances and ecclesiastical punishment on up to excommunication.” Adultery, fornication, and other sexual offenses came before the synodal court. There is no doubt that the synodal courts, and not just in the southern German and Alemannian realm (perhaps with the exception of the bishopric of Constance) but also in Basel and Chur, successfully fulfilled their job of moral and social control even in the fifteenth century.²⁷ No fewer than 874 offenses against sexual morals and marriage law were handled between 1459 and 1520 in the synodal court of the small archidiaconate of Wetzlar in the diocese of Trier alone. There the suits for *fornicatio* and adultery outnumbered

26. RPG 6.1993 (year 1484).

27. Cf. Arend, *Zwischen Bischof und Gemeinde*, 138 ff. Quotation in Enno Bünz, “Die mittelalterliche Pfarrei in Franken,” in *Festschrift für Alois Schmid zum 60. Geburtstag*, ed. Konrad Ackermann and Hermann Rumschöttel, *Zeitschrift für Bayerische Landesgeschichte* 68 (2005), 70. On the synodal court in Basel, Chur, and Constance, see also Albert, *Der gemeine Mann*, 57–60.

all other offenses, such as the refusal to live as a married couple or the failure to carry out the *sollemnisatio*.²⁸

In marriage processes, as became clear in the example of Flickenhans and Ottilia, the episcopal official applied the relevant decretal law very systematically. As soon as an impediment that could only be dispensed by the pope arose, in most cases too-close relationships by blood or marriage or spiritual relationships, the episcopal courts decreed a separation, without consideration of the social situation of the couple. Whether the couple knew about the impediment or not appears not to have played a role in the judge's decision, even though deliberate transgression of the canons had the result of automatic excommunication. Ulrich Jeger and Anna Mosbrecherin were related by blood in the third and fourth degree, married knowing nothing of it, and in 1456 were "called upon to separate by the official of Constance" because of the impediment.²⁹ It did not matter to the spiritual judge how long the couple had already lived as a married pair. Petrus and Elisabeth from the village of Zöschingen near Augsburg were spiritually related to each other by a double case of godparenthood, which they knew. After fifteen years of married life and eight children, the Augsburg official forbade them to live together.³⁰ In the case of couple from Speyer, twenty years had passed since their wedding when they found out about an impediment and turned to the penitentiary in order to avoid separation.³¹ Two persons from Strasburg "lived together several years" before they discovered an impediment that would separate them.³² The mere suspicion of offense sufficed to make the official take action. A couple from the area of a baptistery church (*pieve*) in Münster Valley, which today lies on the Italian-Swiss border and at the time belonged to the bishopric of Chur (in any case, far away from the seat of the bishop), had gotten married without knowing about a spiritual relationship between them. The text of the supplication says that, after two years

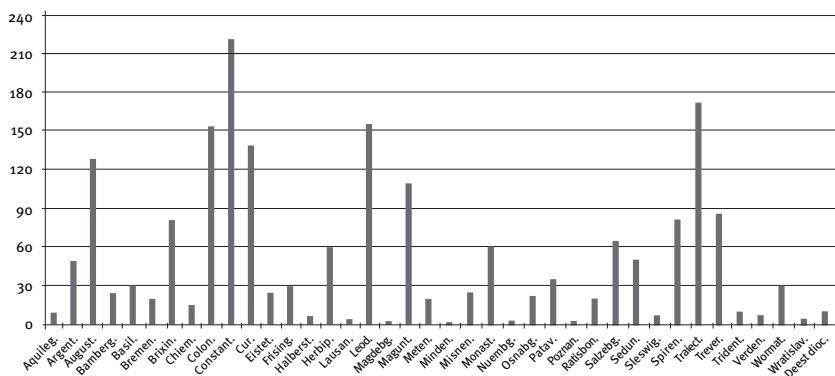
28. Wolf-Heino Struck, "Die Sendgerichtsbarkeit am Ausgang des Mittelalters nach den Registern des Archipresbyterats Wetzlar," *Nassauische Annalen* 82 (1971), 125ff.

29. RPG 3.1821.

31. RPG 3.1813 (year 1456).

30. RPG 3.1824 (year 1456).

32. RPG 3.1768 (year 1456).



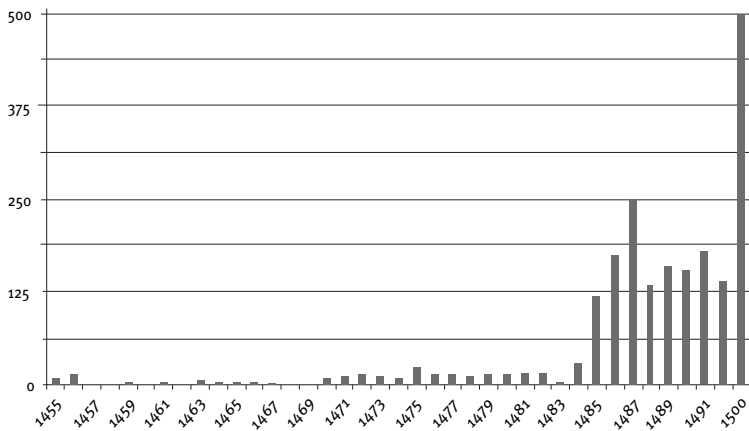
Graph 11. Involvement of Diocesan Courts

of marriage, “the rumor of the impediment came to the ears of the official in Chur.” In order to beat the impending separation, the couple turned to the penitentiary and received the papal pardon before the official of Chur could separate them.³³

An important result of our investigation lies in demonstrating that the interference of the official in marriage relationships became noticeable only in the last quarter of the fifteenth century and then came to the fore in a significant way from 1484 onward. One can read this increase in the activity of diocesan courts (official, chapter, vicar general, bishop) with full clarity in the supplications. Almost a third of all the supplications (2,001 to be exact) mention that the petitioner had been involved in a process by a diocesan authority before the supplication to the pope. Graph 11 shows the distribution among the dioceses.

As the chart shows, above all the officialate court and court of the vicar general of the bishoprics of Augsburg (131), Brixen (82), Chur (141), Cologne (157), Constance (225), Liège (158), Mainz (111), Speyer (81), Utrecht (171), and Trier (86) exhibit noteworthy activity in marital matters. Moreover, it is the western and southern regions

33. RPG 3.1681 (year 1455).



Graph 12. References to Diocesan Courts

of the German empire that especially stand out here. The distribution over the course of time shows the sharp rise beginning in 1485.

Couples Obey the Church—or Not

We know that diocesan courts prohibited couples whose marriage was weighed down by an impediment from living as a married couple until their relationship was cleansed through a papal letter of pardon, but the question arises whether this prohibition had any effect. In actuality, the majority of those couples charged before the official obeyed the episcopal order to separate from table and bed, “as obedient children of the church,” as many supplications explicitly state. A couple from Bamberg was obedient in advance of any order: they renounced sleeping together as soon as they found out about the impediment between them and indeed all the way until they had received the papal dispensation.³⁴ Other supplicants, in their supplication to the pope for the grace to continue in a marriage tainted by

34. RPG 3.1825 (year 1456).

an impediment, underscore that they had in fact followed the episcopal demand to separate. The readiness to comply with the court-decreed separation had, however, dropped off beginning in the middle of the fifteenth century, even if the low number of cases does not admit a solid, statistical claim. While under Pius II and Paul II seven suppliants stated that they had ignored the *divortium* and only three emphasized that they had followed it, the ratio of disobedient couples to obedient ones during the pontificate of Sixtus IV was 19:8, under Pope Innocent VIII 11:4, and during the Holy Year of 1500 only 14:3!³⁵ Moreover, the couples in the empire apparently were aware that every refusal to obey the officialate court earned automatic excommunication.³⁶

There were definitely couples who, after many years of marriage and, just as mother church liked it, blessed with a horde of children, refused to comply with the demand of an ecclesiastical judge to separate. For instance, an official from Würzburg had separated the couple Nikolaus Möller and Katharina Gelbertin because of a spiritual relationship. They only seemed to follow his command, but in fact they lived together as before and had children.³⁷ Ecclesiastical punishments, from warnings from the pulpit about exclusion from communion all the way to excommunication and interdict, seem not to have deterred couples like Nikolaus and Katharina. A couple from Villingen in the bishopric of Metz, for example, had been summoned before the episcopal court because of their continued and well-known immoral behavior and had been sentenced by the *penitentiarius generalis* of their ordinary to a pilgrimage to Tulle. At the pilgrimage site in Lotharingia, the two were to obtain an indulgence. Moreover, the penitentiary had imposed on them, under punishment of excommunication, never to have intercourse with each other again, which they did pledge but failed to keep. For this reason, they had no other option to purify their relationship than to turn to the pope in Rome in 1471 with the request that they be able to mar-

35. See the index in the RPG volumes under the word *parere*.

36. RPG 5.552 (1468): "ordinarius eosdem per sententiam definitivam divorciavit, quare excommunicationis sententiam incurrerunt."

37. RPG 3.1838 (year 1456); RPG 7.95 (year 1489).

ry again after receiving absolution for the imposed penance and be able to remain in this marriage.³⁸

Ecclesiastical prescriptions at the local level were not stringently and patiently followed everywhere or at every time. The public “scandal” that was thereby unleashed, namely, that the church often separated a marriage already blessed with children, was repeatedly put forward as the reason for the request for dispensation. In the minds of the faithful, the *divortia* imposed in rows by the official ran up hard against the Catholic teaching of the indissolubility of marriage. The papal pardon thus met both a social and a religious need. A suffragan bishop in Constance in the year 1476 handled a case less rigorously than his official. Ulrich Rorbas and Anna Kellin had married clandestinely and had children. It then became known that they were moreover related by marriage in the third degree, for Ulrich’s deceased first wife and Anna were related in the third degree by blood. The official had on this account opened a process against them, had the families questioned, and separated the couple because of the impediment “through a definitive judgment.” Ulrich and Anna did not obey him; to the contrary, they continued to lead the married life “with the agreement of the suffragan bishop of Constance” until the time of their supplication on February 5, 1476, “so that they could support their children.” They had turned to the episcopal curia against the judgment of the official and gotten what they wanted, but with the condition that “they strive after a dispensation of the apostolic see.” The penitentiary granted the dispensation but imposed a composition on the couple.³⁹ Unfortunately, it cannot be determined with certainty who the understanding bishop was. At the time, when the controversy in the bishopric between Otto von Sonneberg and Ludwig von Freiberg split the region around Lake Constance, three suffragan bishops of Constance were in charge in the extensive diocese, the Franciscan Daniel Zehnder, a certain Caspar, and a Dominican from Zurich named Burkhard Tubenflug. If Ulrich came from the locale of Rorbas, it might have been the Dominican Tubenflug, resident in the nearby Zurich, who had given them the good advice.

38. RPG 6.3445.

39. RPG 6.746.

The proctor who had given advice to a couple from the Bavarian Chiemsee in their emergency situation proved to be not any less sensitive or well versed in the possibilities of the application of ecclesiastical dispensation law. Christian and Anna had given themselves to each other eighteen years earlier and in the meantime had had a great number of children, when they found out (again we unfortunately do not know how) that Anna's mother had served as godmother to Christian. Now they were afraid of being separated at the hand of the official. But since witnesses could no longer be found to prove the spiritual relationship, their proctor made the argument that the pope might grant them dispensation, without the interrogation of witnesses at the local level, and without any process, but rather have a *littera* issued immediately. The regent acted in accord with the request and instructed the provost of Chiemsee to proceed in that exact fashion.⁴⁰

Why Couples Did Not Want to Be Separated

As has just been ascertained, for the couple that had violated general canon law and was separated by the episcopal court, only the papal well of grace offered the prospect of continuing in their marriage. But how did those separated by the official argue for their request? What words did their proctors use in order to convince the penitentiary that the granting of the papal pardon would be appropriate in their case? There are three arguments that one encounters repeatedly in the texts:

1. A lasting separation, as had been judicially ordered by the official, would create scandal (*scandala*) in the community and in the families of the couple. The term *scandalum* played a central role in canonical jurisprudence. The goal of every judicial intervention had to be to prevent scandal.

2. A separation would cause the woman to be defamed. This argument appears in the supplication of a couple from Trier from 1456 who were commanded to separate after it had become known after

40. RPG 7, ASV PA 38 fol. 27r (year 1488, Christannus Schwenker).

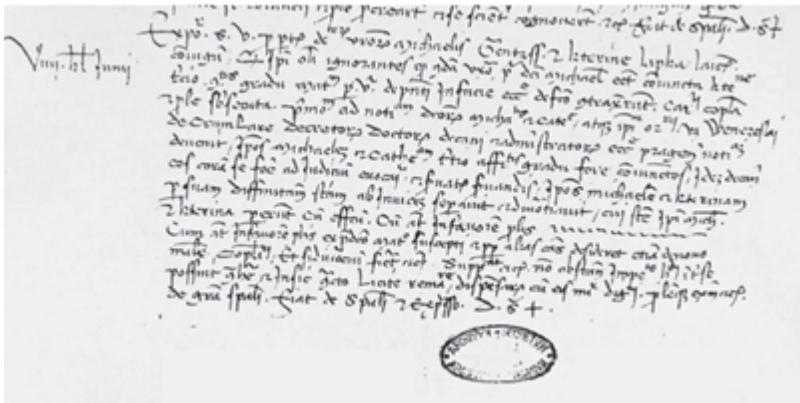


Figure 6. Section of a page from Pope Calixtus III's register of supplications with the text of supplication RPG 3.1688. ASV PA 6 f. 175r.

several years of marriage that a consanguinity in the third degree existed between them. The husband objected that “his wife would be defamed by a divorce.” Both arguments, scandal and defamation, are also found in a supplication from Cologne from the same year.⁴¹ The word “defame” refers to a state that in the field of legal history is designated as “infamy”—the divorced woman lost her good reputation.

3. A third argument in favor of the continuation of the marriage tainted by an impediment was *favor prolis*, for the sake of the children. We encounter this word pairing for the first time in 1455 in a supplication of a couple from Prague. In relationship to these proceedings, the archives of the cathedral chapter in Prague contains a copy of the *littera* of the penitentiary to Wenzel von Krumlau, the administrator of a Bohemian archiepiscopal see, which was vacant at the time because of the Hussite Wars. The couple in question had married in accord with canon law and had children without realizing that they were related by blood in the third degree. Then the couple, as well as the official, became aware of the marriage impediment, and Wenzel separated the two according to a proper court proce-

41. RPG 3.1767 and 1804.

ture. They adhered to the decision of the court but turned to Rome to avoid the scandal following upon the possible divorce and with the additional argument of *favor prolis*. The penitentiary expressly granted them dispensation and the legitimization of their children.⁴²

Lying and Fraud before the Court

As in every court, so also at the episcopal marriage tribunals, people utilized all possible means in order to help their situation come to the “right” conclusion. There was deception and exaggeration, sometimes even outright lying and fraud. Petrus Zelinger from the little city of Kaisersesch near Trier had made a pledge of marriage to a woman, whereupon she began a relationship with him and bore children.⁴³ After some time, the supplication says, the woman’s friends demanded of Peter that they observe the ecclesiastical marriage ceremony, the *sollemnisatio*. Apparently this step was a little too much for good old Petrus; he did not want to contract an indissoluble marriage with the woman. Under the circumstances, he needed a trick to get him out of this scrape, something that would enable him to break off this suddenly burdensome relationship. He came to an agreement with a certain Elsa that she would claim Petrus as her husband in court before the official of Trier. He then swore before the tribunal that he had already contracted a marriage earlier with Elsa. The fraud then came to light. In this case, however, it was only a matter of proving the shady dealings employed at court.

For Philipp Gruitter from Mainz, the fraud was at the heart of the case; he all but fell victim to a clever matchmaker. The young man had participated in a feast “and there had drunk so much that he was clumsy and befuddled by all the wine.”⁴⁴ Among the participants in the feast was also a woman with her daughter, who was of marriageable age. The woman attempted “through certain words to marry [the girl] off to Philipp. She took Philipp’s hand,” we read, “and that of her daughter and said, ‘I give my daughter to you in the name of

42. RPG 3.1688. This is the supplication in Image 6.

43. RPG 7.2374 (year 1492).

44. RPG 7.2609 (year 1490).

the Father.” Here was a wedding ceremony of the ages, to be sure, but one that should have had the effect intended by the mother. Whatever might have occurred at the celebration, the next morning Philipp, who intended to become a priest, did not remember anything about the wine-fueled happenings at the feast. According to his claims in the supplication, at any case, he was not aware that he had been bound by the bonds of marriage. The good mother nevertheless shouted the claim from the rooftops far and wide. Philipp could do nothing other than bring the daughter before the episcopal court in order to prove his “innocence.” In the course of the process that the marriage judge carried out, he heard two witnesses from the party of the daughter, both of whom had taken part in the feast. The one reportedly lived with the mother in concubinage, the other was a relative—at least that is what Philipp claimed. The two testified that the specified words had been spoken and a marriage contract concluded at the feast. While the process was still underway, Philipp rushed to Rome and had himself ordained a priest. One could receive spiritual ordination quickly only at the Roman curia; in the dioceses, the ordination of priests occurred only rarely. And in this case, time was of the essence; if he was now ordained, Philipp could no longer marry.

When the two women in Mainz found out that Philipp had been ordained a priest, they no longer burdened him with the alleged marriage. The daughter soon afterwards married another man. But Philipp had not thereby gotten rid of all his problems by any stretch of the imagination. His adversaries and enemies in Mainz denounced him to the bishop, and the bishop then suspended him from the performance of all priestly activities “until the matter should be cleared up by Rome.” Philipp thus had to ask the pope for a *littera declaratoria* that would certify for him that he “had never had sexual relations with the daughter” and could carry out his priestly office. Interestingly, Philipp had asked that this *littera* be delivered to the cantor of the Mariengrad Church of Mainz, not to the bishop. His juristically correct argument was this: he considered the bishop to be biased. The penitentiary nevertheless decided to have the *littera* also come to the bishop who had suspended him.

Forced Marriages

Grounds for the interference of ecclesiastical courts and the initiation of a process could be the endeavor to have the unmarried comply with morality as well as the existence of a marital impediment. Since the church recognized only lawful marriage as the legitimate institution for sexual activity with the goal of producing children, one should not be surprised that it not only preached this but also took action against every form of *fornicatio*. Indeed, already at the beginning of the thirteenth century, several theologians of the University of Paris had represented the opinion that *fornicatio simplex*, sexual intercourse between unmarried persons of different sexes, was not a sin, but this view was reproached as heretical in 1277. The opinion that extramarital sexual intercourse was not a mortal sin was, nevertheless, widely held in the fifteenth century in defiance of the official moral teaching of the church. A layman from Lausanne had been put in prison by a secular court for this and other blasphemous claims.⁴⁵ Only after a validly contracted marriage could a respectable girl find herself ready for sexual intercourse. At the very least, she would have carried out a pledge of marriage before witnesses before she went to bed with the man of her choice before the wedding. Not a few women who relied on such a promise must have found out later, however, that her passionate lover's oath was later not worth anything before the court if he then denied that he had ever made the marriage pledge. Who could enter the witness stand for her? Thus it was not a rare occurrence that men attempted "to obtain under false pretenses," as the jurists were accustomed to say, sexual intercourse in this way. One can clearly see from the official court acts of German dioceses in which marriage processes are transmitted, as we will soon see, that in most disputes it was women who wanted the existence of a marriage to be affirmed before the court and the men with whom they had had sexual intercourse to be named as their husbands.

Along with the ecclesiastical authorities, city courts, families,

45. RPG 7.2038 (year 1489).

and clans also endeavored to marry a young couple that had given themselves over to the sin of pre-marital, corporal love, *fornicatio*, as quickly as possible. In the upper social classes, however, the decision to marry was rarely left to young men and women. In spite of the demand to the contrary of Gregory IX's decretal on the freedom of marriage (X 4.1.29), in the nobility, patriciate classes, and well-off families of urban burghers, preparing for a marriage was primarily a matter of the preservation of the family's property and the increase of its estate. *Familia, id est substantia* was a typical principle of this social class. For this reason, parents were concerned with strategic marriage alliances of their posterity when their heirs were still children, and for the most part the children could not react in any other way than to obey. Did they have to resign themselves to their parents' will when they grew up, when they became, as we say, of age? In the penitentiary's register of supplications, we find impressive examples of youthful courage in response to arranged marriages that had in some cases been set up for them years before by their parents.

Arkonus and Meista from part of the bishopric of Münster in Friesland had been engaged to each other by their parents *per verba de futuro* when he was seven and she nine years old. Meista's father soon gave her along with the dowry over to the family of her bridegroom, where she grew up with Arkonus until he was fourteen and she was seventeen years old. Nevertheless, they had never, as they stress in their joint supplication to the pope, slept with each other. She had not agreed to the marriage contract concluded by her parents. What is more, both wished to enter into marriage with a different partner. For this reason they submitted a corresponding supplication in Rome in the year 1486. Their wish was approved because, according to a decretal of Pope Innocent III, *sponsalia de futuro* could be dissolved under circumstances of mutual agreement.⁴⁶

In her bridegroom's house, Meista apparently also remained a virgin. Since the Middle Ages, virginity counted as an indispensable prerequisite for a good, successful marriage. Not just in the late Middle Ages, but also into the twentieth century in our parts, no set

46. X 4.1.2; RPG 7.2502.

of parents were happy to see their daughter be seduced or, as one was accustomed to put it, be made to “lose the flower of her youth.” In Latin, the supplications apply the verb *deflorare* for this unhappy event. According to widespread conceptions of the time, the chances of marrying sunk drastically through pre-marital sexual intercourse, but only for a girl, if she did not marry her seducer. A “fallen maiden” came to be called *corrupta* in curial usage and was considered defamed. Why should it then surprise us when families emphatically wanted to ensure that their daughter married the robber “of the flower of her youth” under any circumstances? And while the girls usually were prepared for such a settlement, many times things looked different from the side of the men involved. Clearly, *fornicatio* did not count as a source of dishonor for the man—perhaps as a cavalier mistake, or in the worst-case scenario, as a sin.

Love and passion could not always be suppressed by the sexual morality of the church. Human nature and hormones were at work in young men and women of the fifteenth century just as today, regardless of commands and prohibitions. Johannes (Hans) Eysselin from Augsburg had already entered the house of his girlfriend, Anna Burglin, on several occasions and, as he himself admitted, had slept with her multiple times.⁴⁷ One day, however, when Hans and Anna met once more for a tryst in her house, something unexpected happened: a whole group of Anna’s friends and relatives forced their way into their love nest by force of arms. According to Hans’s own words, they seized him “by the collar and held two drawn swords in front of his face, saying, ‘Now you can make a choice, either take Anna as your wife immediately or die.’” There was no way out of this situation, as Hans quickly realized; he had not the slightest chance of escaping. Thus, as his supplication to Rome recounts, he gave in to their pressure and raised his right hand, slyly stretched out two fingers, namely the pointer finger and the middle finger, but not three of them, as was customary when taking a proper oath in the Middle Ages, and promised under oath that he would contract a marriage with Anna. That was not enough; the intruders forced the

47. RPG 1.207 (year 1439).

couple to take each other's hands and repeat the usual *verba de praesenti* prescribed by canon law for what they considered to be a valid contraction of marriage—in other words, the words common even today at the marriage altar: “I, Hans, take you, Anna, as my wife” and “I, Anna, take you, Hans, as my husband.”

Everything seemed to have turned out well for Anna and her relatives, the goal was achieved, Anna's honor was established once more, and the intruders could put their swords away. But Hans proved himself to be shrewder than the men who so wanted to make him their brother-in-law. Advised appropriately by a friend trained in legal matters, he expressly pointed out that the decisive thing had not taken place again after the dramatic assault. Earlier he and Anna had indeed many times taken delight in each other and performed the *actus fornicarius*, but now, after the forced marriage, no more. And that was precisely the exact foundation for Hans to open up a legal loophole. As he explained in his supplication, he had been treated with force and fear (*vi et metu*). His proctor even expertly worked a citation from Roman law into the supplication. That was the way out. Since according to canon law every contraction of marriage had to occur of one's own free will and without force (even by parents), his “wedding” forced by Anna's relatives was not valid. *Libera matrimonia esse debeant*, “marriages ought to be free.” The decretal of Pope Gregory IX demanded this. As noted earlier, Gregory had formulated this sentence in a decision made in 1227, which found its way as canon 29 into the first title of the fourth book of the *Liber Extra* (X 4.1.29), which is concerned exclusively with marital matters. After the above-described incident, Hans had never recognized this forced “marriage” by having sexual relations with his Anna again, which would have made his relationship a valid marriage.

For this reason, Hans asked the pope for a declaration that he had not contracted a valid marriage with Anna through the described occurrence and that he could marry another woman of his choosing and have children. Additionally, he asked to be released from his forced oath, an absolutely correct procedure juridically speaking. At the same time, all of his opponents, above all the members of Anna's family, were forbidden to talk. They had probably announced

far and wide that Hans had contracted marriage with Anna before their eyes. But would the Roman curia approve his proposal? On the Tiber, the jurists of the penitentiary could not fully know what had really happened in Augsburg in 1439. It also was not necessary that they did know this; since the twelfth century, canon law had created clear principles for how a valid marriage comes about. And the principle of free will belonged to these principles of a valid marriage. He who slept with a maiden did not yet contract a marriage, not even if he had often promised later to marry her, perhaps in order to get her to agree to sleep with him. In a dispute, the woman had to be able to prove such a promise before an ecclesiastical court, and that was a difficult task, because, for the most part (as it is with these matters), she had no witnesses. But when force and pressure were in play, as in the case of Hans and Anna, then the marriage was legally invalid from the start. The penitentiary thus had developed a reliable procedure in order to come to a fitting judgment in these and many similar cases. The supplication was checked for its formal admissibility alone, not for the truth of the petitioner's statements. In accord with the auditor's supervision, the decision of the authorities consequently read *fiat ut infra*. This meant that the case was referred back to the local episcopal court, which is exactly what occurred in the request from Hans. The official in Augsburg was commissioned to look into the facts of the case. Only if the marriage court had heard Anna's party and called witnesses on the matter and if the judge then recognized the statements of Hans to be truthful did the judge have to follow the decision of the penitentiary and set Hans free to marry another woman.

If Hans had not turned to Rome and sought release from his oath, we would have known nothing about the Hollywood-ready events in Augsburg in the year 1439. The corresponding sources in Augsburg, the acts of the episcopal officialate court about the actions of Anna's family as well as the legal process in Hans and Anna's affairs ordered by Rome are lost. Officialate court acts are preserved in the archives in the city of the Fuggers only from about 1511, with the exception of one register fragment from the years 1348 and 1352. Nevertheless, on the basis of similar cases, we may assume with cer-

tainty that the court of Augsburg did not simply decide in Hans's favor. At the very least, he would have had to pay the *Kranzgeld* (the fine to be paid by a man who had had sexual relations with a woman but failed to marry her). He could not get out of his affair with Anna so smoothly in the bishop's presence, as he gladly would have had it. Over the episcopal court stood the archiepiscopal court of Mainz; whether Hans appealed to it likewise cannot be verified from the sources. For a city like Augsburg, in which close to 20,000 people lived at that time, the events described were too common to leave major traces behind or to be incorporated at all in the city chronicle. Only in distant Rome, in the archives of the highest papal office of penance and grace, do we find out something of the dramatic occurrences in the house of Anna and the (somewhat low but by no means atypical) behavior of Hans toward his longtime lover.

Frequently other stories also went along dramatically like the love story of Hans and Anna from Augsburg. As a rule, members of the family of a seduced young woman attempted to bring about a marriage, by force if necessary. In Pfronten in the Allgau, we read in another supplication, a similar case took place in 1473.⁴⁸ The protagonists, Erhard and Anna, were both single but had already frequently shared a bed with each other, which did not remain hidden from Anna's family. One fine day, Anna's brother and friend did not want to tolerate any further the couple's immoral activity. Since Anna also insisted on marriage, together they pressed Erhard to pronounce the *verba de praesenti* before them as witnesses. In this way, so they thought, Anna and Erhard were now married, and the scandal of their pre-marital relationship would have found a happy ending. After this coerced declaration, however, the lover prudently avoided going to bed with Anna again and chose another woman. He wedded a certain Engela, who was, however, related to Anna by blood in the third degree, and had children with her. In order to ward off Anna's claims that he was married to her, he sought a *littera declaratoria* in Rome. He asked the penitentiary to certify that he was validly married to Engela in accord with canon law and that Anna

48. RPG 6.3495.

could make no valid claim on him. The penitentiary granted him the certification insofar as it would be confirmed before the episcopal court in Augsburg that the pledge of marriage toward Anna had been made under force, as Erhard had claimed, applying the above-mentioned citation from Roman law (*vi et metu*). The fact that Anna and Engela were related was apparently not brought up in this case.

An apparently not powerless woman, a certain Agnes Sundlerin from the bishopric of Constance, went to work in an especially subtle way to “ensnare” Macharius Solloder as her husband in 1498. She not only offered her bed to him of her own initiative but, above and beyond that, also gave him four florins. Macharius did not turn her down and turned up in the evening for the amorous interlude in Agnes’s house. Meanwhile, she had let her neighbors in on her plan. These neighbors suddenly barged into the two’s room after they had made love and threatened Macharius with death if he did not take Agnes as his wife on the spot. In his distress, he spoke the crucial *verba de praesenti*, whereupon Agnes fancied that she had achieved her desired goal. But much was lacking! The clever Macharius also appealed to *vis et metus* and requested a *littera declaratoria* from the penitentiary, which affirmed for him that his coerced marriage pledge was invalid. He smartly avoided sleeping with Agnes again afterwards, and thus no valid marriage had come of the contrived night of love.⁴⁹

Whereas in the story just told a woman had taken action, Aleydis Theoderici from the bishopric of Utrecht knew to report to the pope how a man wanted to force her into a marriage.⁵⁰ At the age of fifteen, thus at a marriageable age according to the custom of the time, she found herself alone in her house when a certain Nikolaus Petri, whom Aleydis claimed to be “a lad of bad repute,” broke into her room. He compelled her to make a declaration of intent to marry *per verba de praesenti*. Overcome with fear and anxiety—her proctor chose to use the citation *vi et metu* from Roman law to express this—she pledged marriage to him. After her statement, however, sexual intercourse did not occur; Nikolaus did not force himself on the girl.

49. The facts are in the supplication in ASV PA 47 fol. 435r (Alexander VI).

50. RPG 6.3592 (year 1476).

Aleydis explained in her supplication to the pope that she never had intended to marry the lad but rather wanted to bear children with a man of her choosing. The requested *littera* would have expressed that she was in no way obligated to Nikolaus, which the ordinary, to whom her request was delivered for investigation, certainly also would have confirmed.

A dramatic incident played itself out in Rome in 1480. Jeronima, daughter of Christophorus de Missalia, a citizen of the Urbs, had already given herself several times to a Kaspar with the surname "the German" when, one day, her father caught her and her lover in his house *in flagranti*.⁵¹ Kaspar was perhaps one of the hundreds of German tradesmen, above all bakers and cobblers, who earned their living in the Eternal City. Enraged because his family honor had been deeply injured, Christophorus swore to kill both of them then and there if they did not marry immediately. Neighbors and friends of the family were summoned hastily as witnesses and vehemently supported the father in his demand. Jeronima and Kaspar saw no other choice than to capitulate to this ultimatum brought forth *vi et metu*, and they pledged marriage to each other *per verba de praesenti*. Afterwards, or so they claimed, they did not have intercourse again. A short time later, Jeronima's family insisted on celebrating the wedding in due form so that then, when the two legitimately slept together, their marriage would become definitive and indissoluble. But to the surprise of all, the two young people adamantly refused. They had indeed had fun in bed, even if it had also been *fornicatio*, thus a sin, but to get married because of that? No, neither Kaspar nor Jeronima wanted it. She was the one who turned to the pope with the request for a *littera declaratoria*, and, with the line of argumentation already familiar to us, that she had been forced into a pledge of marriage but that marriage according to the doctrine of the church may only be entered into of one's own free will, she requested certification that she was not bound to Kaspar and lawfully could marry another man. Since the matter had occurred in Rome, the regent of the penitentiary commissioned a prelate of the curia, Johannes de Rubeis, bishop of Alatri, with the investigation. If it was shown that

51. RPG 6.3699.

the two had not had sexual intercourse after the forced marriage, he should release her.

Sometimes a forced marriage had absolutely nothing to do with love and lust and everything to do with property and assets. Agnes Nicolai from the Baltic bishopric of Vilna had already lost both parents as a young girl. An uncle administered her not inconsiderable inheritance and served as her guardian. One day, he had called his ward along with a certain Nikolaus Dergevitze and a priest to his place. He instructed the priest to ask Agnes and Nikolaus whether they fancied each other. Intimidated and not perceiving what she was agreeing to, the girl answered with a "yes." Nikolaus, who according to Agnes's report only had an eye toward her inheritance, gave the same answer. No banns of marriage occurred, no festivity was arranged; nor was the marriage ever consummated following this engagement. After three years, during which time Agnes apparently came of age, she got engaged "in due form with banns, ceremonies, and the exchange of ring and gifts" to a nobleman, Laurentius de Wangerow from the Russian bishopric of Luck. The two were later wedded in a church by Laurentius's priest and consummated the marriage. In order to make sure that her assent given before her uncle could not be construed as a pledge of marriage and that she was not bound to Nikolaus, Agnes requested a papal declaratory *littera* in 1481.⁵²

It would not have taken much and Hermann Smelink, a student from a good house in the bishopric of Mainz, would also have been forced into a marriage against his will. He laid out all of the details of the unusual story before the pope in his supplication. When he was seriously ill as a boy, Hermann's parents had made an oath to lead him to ordination as a priest if he got better. He recovered and, as was fitting for a budding ecclesiastic, was sent to the university. Unfortunately the university rolls do not allow us to determine which institution of higher education Hermann attended. For an unknown reason, after some time he broke off his studies of the *artes* and moved to another city in the same diocese. There he accepted

52. RPG 6.3722.

a position as a tutor in the house of a citizen named Johannes and received food, lodging, and clothing as payment. In the six months that he lived in the house of his employer, he fell for the family's daughter with such undying love that he became the laughingstock of the city.⁵³ Because he was of the opinion that love and learning were incompatible and that he had made too little progress in his own learning in this condition, he wanted to give up his life as a tutor and asked his employer to let him go.

Contrary to the young man's wishes, father Johannes, who had long noticed that Hermann came from a well-off household and was head-over-heels in love with his daughter, pursued another plan. He invited Hermann into the parlor of the house and made known to him that, if Hermann did not promise then and there to marry his daughter, whom Hermann would very gladly have, he would not let Hermann leave. In order to get out of the city, Hermann made the promise (but he does not report to us the words he spoke to that effect). He then left the house and returned to the university, where he took up his studies once more. After about a year, Johannes, his former employer and the father of the girl he had then adored, showed up in the university town and had Hermann locked up because he had not kept his pledge of marriage. He was to remain in jail until he renewed his pledge to marry Johannes's daughter. For five weeks, Hermann steadfastly refused to do this; then finally he gave in so that finally he would be set free. Free once more, he had it authorized in a declaratory letter from the penitentiary that he could become a priest and was not compelled to contract a marriage with the daughter of his former host.

The family members and friends of a certain Agnes Eberhartin from the village of Ruschen in the bishopric of Meissen very plainly showed themselves to be concerned for the future marital happiness of their daughter. As a precaution, they even involved her pastor, Jakob Leineweber, who had conveyed the story in a supplication to the penitentiary from the year 1455. The priest must have applied for

53. RPG 7.2561: "quandam filiam dicti Johannis adamare incepit adeo, quod propter hoc per omnem vulgum dicti opidi de amore huiusmodi famam acquisivit."

absolution and dispensation in Rome because of several uncanonical activities and in order not to lose his prebend. "In the middle of the night, her family had caught Agnes in an intimate state together with her lover, Nikolaus Schmitz," the ecclesiastic reported. "With sword and crossbow, they forced Nikolaus to make a declaration of marriage, fetched him, the ecclesiastic, out of bed, and demanded that he wed the two on the spot."⁵⁴ So that no scandal would arise for the family, he had to carry out the wedding at once and secretly (without preceding banns of marriage), which he apparently did indeed do; otherwise he would not have incurred ecclesiastical punishment. The major penitentiary had mercy on the poor village priest with the result that he freely granted him grace to be able to keep his parish office.

It even happened that a pastor collaborated with the kin group to transform a morally objectionable relationship into a marriage. Cristina, a widow from Salzburg, had invited Georg Coral over to her house (and not for the first time). This time the good Georg did not just find the lustful widow, but her parents and grandparents immediately showed up, called the local priest, and demanded from him that he marry the pair immediately.⁵⁵ Georg refused—his proctor of course employed the well-known formula of *vis et metus*—but in the end gave in to the threats of the family and ecclesiastic, only under the force of arms. He affirmed in his supplication that he had not slept with Cristina again afterwards and asked the pope for a declaration that he could wed another woman.

A final relevant story of a forced marriage played itself out again in Augsburg; the protagonists were a layman, Vitus Hertz, from Augsburg and a certain Ursula Sessin.⁵⁶ Ursula, who claimed still to be a virgin when she got involved with Vitus, had shared a bed with him *fornicarie* on multiple occasions. According to the information of the supplication, Vitus was a free citizen of Augsburg, and "his father was a rich man; Ursula on the other hand was a serf of Count Hugo von Montfort." For this reason, the girl's family tried to dupe Vitus and force him into marriage with Ursula. When Vitus once more had

54. RPG 3.106.

55. RPG 5.2128 (year 1470).

56. RPG 7.2532.

a romantic encounter with her, they forced their way into the room and surprised the two, who were stark naked. With weapons before his eyes, he was given the choice either to die or to marry Ursula on the spot; out of anxiety and fear, and against his free will, he preferred to contract a marriage with her *per verba de praesenti*. As soon as he was free, he got out of there but did not dare to tell anyone, even his parents, about the misadventure. After the *verba de praesenti*, he certainly did not have intercourse with Ursula again, which she was always pressuring him to do on her family's advice. Her "marriage" was thus not yet indissoluble. Vitus rejected Ursula's invitations for a long time, but she found a way to get what she wanted. One evening she slipped into his room and seduced him. Before they slept together, he said to her that "he would not make love to her as a legitimate wife but as a concubine."⁵⁷ Ursula also agreed to this fine but canonically consequential distinction, or so he claimed, before he complied with her wishes, and not just once, as can be read in the supplication.⁵⁸ Afterwards Ursula understandably claimed to be Vitus's legitimate wife.

In order to escape his fate, Vitus turned to the pope with noteworthy arguments and refined cleverness. For one thing, he reported, he was forced once into marriage *vi et metu*, and thus invalidly, and had never afterwards confirmed his intention to marry. He failed to mention in this place that at a later time he had nevertheless willingly had sexual intercourse with Ursula again. The second argument was a social one: according to "the customary law of his homeland," the rule in effect was that the children from a marriage of persons from unequal social standing followed the lower half. For this reason, their potential children would have been unfree like the mother and would have been serfs of the Count of Montfort. This type of marriage law was in fact widespread in the southern German/Alemannian regions. Vitus consequently asked the pope to instruct Ursula to bring forth witnesses to the effect that his marriage pledge had arisen from his own free will and had not been extort-

57. Ibid.: "avisando primitus Ursulam, quod eam non ut uxorem legitimam, sed concubinam cognoscere vellet."

58. Ibid.: "iteratis vicibus actu fornicario carnaliter cognovit."

ed *vi et metu*. For his part, he wanted to take an oath about the correctness of his statements. Because of the lack of sources, we cannot determine whether he received this acquittal of sorts from the Augsburg officialate court, to which the investigation was handed over. The penitentiary had at least instructed that none of Ursula's relatives be admitted as witnesses in Augsburg. Unfortunately, the end of the story thus remains hidden to us. Vitus would not have escaped, however, without having to pay a financial compensation, the *Kranzgeld*, to the poor Ursula.

The church's insistence on the ability to choose one's marriage partner freely was also directed against practices grounded in the customary law of the Middle Ages. Family members of a seduced girl were not the only ones to attempt to force a marriage; secular feudal lords did so as well. The right of a landlord to exercise decisive influence on the conduct of his tenants in marriage and to inhibit marriages outside of his own land holdings was anchored in numerous late medieval legal ordinances. We meet realities of this kind in the supplication of a couple from Trier from the year 1474.⁵⁹ In it Christian de Saltsberge and Helena vamme Hove confessed to having lived together for several years as man and wife with the mutual promise to get married in a church at a later time. Their concubinage was suddenly broken off when, at the behest of several noble officials of Fort Liebenscheit in the Westerwald, which belonged to the count of Nassau, Helena was forced publicly and *per verba de praesenti* to contract a marriage with a certain Konrad Neben von Ratzhausen, who was moreover related by blood to her Christian in the third degree. As a result, she turned to Rome. Her proctor emphasized Helena's unwillingness with regard to the forced marriage, using the beloved citation from the decretal of Innocent III (X 1.40.4) that she had been forced *per vim et metum, qui cadere poterant in constantem*. Before she could be forced to consummate the marriage with Konrad through the *carnalis copula*, Helena managed to flee to her Christian. Both asked the pope for a declaration that they—as they had already been planning for a long time—could now marry. If the informatory

59. RPG 6.3510.

process to be led by the official of Trier confirmed her claims, then, the penitentiary decreed, her wish could be fulfilled.

Konrad Maurer, a layman from the bishopric of Prague, fared in a way similar to the Trier couple.⁶⁰ He served a nobleman, “making a living by the work of his hands.” The nobleman not only had the man work for him but also commanded him one day to marry a certain Martha, perhaps also one of his serfs. Konrad refused. We do not find out why his master desired this marriage—perhaps, for instance, because of some existing intimate relationship or similar bond between Konrad and Martha? The nobleman insisted, threatening to torture Konrad and “put out his eyes” if he did not obey. He had to yield to the power, “compelled by force and fear” (*vi et metu coactus*). He married Martha under the eyes of his lord and lived with her “for some time together in a *contubernium*,” as the state of his relationship with the woman was called in accord with canonical terminology, since it was not a rightful marriage. Then it became clear to Konrad that Martha “was infected with the Hussite error.” This gave him the chance to get rid of his Martha with ecclesiastical blessing. Since he explained to her that he wanted to remain faithful to the Catholic faith, she left him (willingly?) and “fled into the region of the heretics.” Konrad lived alone for ten years without a sign of life from Martha. He eventually came to marry “a good Catholic woman” by the name of Katharina; they had children and lived together for thirty years. But then Martha suddenly surfaced again “forty years (!) after her flight” to the Hussites. Neither Konrad nor Martha could have been young anymore; nevertheless, she wanted “to have [him] back as her legitimate husband.” One cannot blame Konrad for having little desire to give up his marriage to Katharina. After he had gotten expert legal advice, he made a supplication to the pope and asked for a *littera declaratoria* affirming that “no bond of marriage stood between him and Martha, but rather that his marriage to Katharina, and his children, were recognized as legitimate.”

60. RPG 6.3740. This case is also mentioned in Lucie Dolezalova, “‘But if you marry me’: Reflections of the Hussite Movement in the Penitentiary,” in *The Long Arm of Papal Authority*, ed. Gerhard Jaritz, Torstein Jørgensen, and Kirsi Salonen (CEU Mediaevalia 8; Budapest, 2005), 132.

After consultation between the regent and the auditor of the apostolic palace, the bishop of Nocera, Giovanni de Ceretanis, the penitentiary decided as usual to assign the case to the ordinary. But who was responsible for the bishopric of Prague in 1481? After the Hussite Wars (ca. 1420–34), the archiepiscopal see remained vacant until 1561. The cathedral chapter took care of the business of the bishopric. What is in any case noteworthy is that, in the judgment of the penitentiary, it was not the fact that Konrad had gotten involved with a heretic that served as the basis for the annulment but the fact that he had been forced by his lord into this “marriage” *per vim et metum*. A certain Jaroslav from Olmütz argued exactly the opposite in 1456 in another supplication from the Bohemian realm. He had married a certain Margarete, fully knowing about an existing kinship by marriage in the second degree, in order “to dissuade her from the Hussite sect,” as he claimed.⁶¹ He asked for a dispensation so that the two of them could remain married so that they could avert the danger of Margarete “returning again to the Hussites” if they were separated (to which the couple had in all probability been condemned by the official of Olmütz).

More Manners and Morals at Court?

It was not just in the families of city-dwellers, tradesmen, and merchants that one had to attach importance to custom and manners; all the more did a noble “employer” have to take them into consideration. At the courts, in the castles, in the residences of the German high nobility lived numerous young men as pages, “in training,” so to speak, as well as young women as ladies’ attendants and servants. These young men and women were, as a rule, single. Love and passion also burned in this arena and could not simply be banned by the courts or steered along the paths prescribed by the church. The estate of Count Erwin von Gleichen, vassal of the archbishop of Mainz, whose castle lay in Eichsfeld, certainly could not be equated with the magnificent court of the Burgundian duke. Count Erwin

61. RPG 3.179.

did, however, employ several young pages. He professed the church's rules of life, even those that pertained to love and marriage. His servants no less than the young nobles at his court were supposed to conform to ecclesiastical commands. One of these was an aristocratic lad named Werner von Sultzbach. One day, Count Erwin found out that Werner had seduced a young woman of his entourage, Engelina von Jagenitz, and carried on a relationship with her over a long period of time. She subsequently brought a child into the world. He was enraged, considered what had gone on as dishonorable for his aristocratic house, and executed swift justice: the young Lord Werner was incarcerated and forced to make a pledge to marry Engelina.⁶²

Count Erwin von Gleichen, not the seduced girl's relatives as in the previous stories, enforced the church's moral code here with vigor. But Werner von Sultzbach recognized in this compulsion his chance to escape the promised but not desired marital union with Engelina with the help of canon law. "With power and force, against which even a sturdy man is powerless," he wrote to the pope (using the well-known citation from the decretals X 1.40.4 and X 4.1.15 going back to a maxim of Roman law), he had given his assent to the marriage with Engelina. The count later renounced the exaction of the pledge, as is gathered from a notarial deed drawn up on the matter. There is not word of Engelina. It is conceivable that the count's backtracking was because of the intervention of the likewise noble Sultzbach family, for whom the planned connection with a Jagenitz was not fitting. In a supplication crammed with several legal citations and with reference to the principle that only a marriage contracted of one's own free will is a lawful marriage, Werner thus proposed to be released by the penitentiary from his pledge made to the count. Moreover Werner mentioned that certain people (almost certainly Engelina's family) claimed that the count could in no way renege on his justified demand without Engelina's consent. The signature of the penitentiary was unreservedly positive toward Werner; Engelina would thus have to seek to have another man while tainted with the designation of *corrupta* or to enter a monastery.

62. RPG 6.3037 (year 1480).

Count Erwin von Gleichen's apparent adherence to canon law might have been the exception among his contemporaries. Far from all members of the German nobility made the church's commands about sexuality the guidelines of their life. Extramarital affairs were part of the daily order throughout noble society, and aristocratic bastards experienced a peak in the late Middle Ages, holding rank and prestige and possessing many lucrative prebends in the church. The following stories, entirely typical for the moral conduct of the nobility, come from the registers of the office of confession and grace in Rome.

One day, as we read in a supplication recorded in the year 1479, Count Wilhelm von Kirchberg, whose castle was situated near the little city of the same name on the Jagst River in the diocese of Constance, visited his sister.⁶³ A young woman from Ravensburg by the name of Barbara Bueli served as an attendant at the court of the Countess von Kirchberg. She was young and very pretty. Count Wilhelm fell in love with her, courted her, and did everything in his power to go to bed with her. But Barbara remained steadfast and, upon his advances, always gave the count the same answer, which is to be found in her supplication: "I will not sleep with a man unless he is my legitimate husband." Certainly a count for a husband would have been quite the catch for Barbara, daughter of a burgher! Presumably Count Wilhelm thought only about sex, however, and not about marriage, and certainly not with a woman of lower standing. He did not let up in his wooing but grew more forward and finally landed in Barbara's bed. When she later protested and demanded that he at least pay her a *Kranzgeld*, he coldly replied that nothing was owed her. A man of his standing, after all, took a woman for himself when he wanted her. He later married a noblewoman of his own social rank; that is at any rate what Barbara said in her supplication.

We know Barbara's sad story only from the Roman register of supplications. But why did she turn to the pope at all? To force the lascivious count to marry her would have been hopeless. Instead, she advanced reasons of conscience (*remorsum conscientie*), fearing that, since she had in the end slept with the count despite her re-

63. RPG 6.3676.

peated refusals at the beginning, she could not enter into another marriage. As remarkable as this piece of writing is, still more remarkable is the answer of the penitentiary to her request for a *littera declaratoria*. The bishop of Constance was to take up the case and, if he came to the realization that the count had slept with Barbara “without intention to marry,” was to permit her to marry another man.⁶⁴ Here in the argumentation of Rome, we find the same logic that Vitus Hertz from Augsburg had already advanced: it depended on the intent, *matrimonialiter* or *fornicarie*, with which one carried out a sexual act. Count Wilhelm had certainly only his pleasure in having sex with the beautiful Barbara in mind. Even according to the doctrine of the canonists, that formed no basis for a marriage; instead, it was sin, plain and simple.

Marriage after Adultery

No one would want to claim that all marriages in the late medieval empire fell in line with the norms of canon law, to say nothing of them approaching what one would generally call a “happy marriage.” The penitentiary’s register of supplications gives us glimpses of very personal relationships about which we discover only a little or nothing at all from other sources of the late Middle Ages. As one reads in the genre, sometimes one thinks that one has made a wrong turn because the stories written out in the register appear to stem not from the sober world of an ecclesiastical judicial court but from fantastical medieval romances or coarse burlesque tales. The connections between literature and real life are especially fluid in the late Middle Ages. This section deals with extramarital adventures and jealousy as well as their consequences; in short, it deals with “the couple as actors.”⁶⁵

Anna Kantengrossin from the diocese of Constance was married to Bertold Volner when she met Bartholomeus Gunteri.⁶⁶ She

64. Ibid.: “non animo maritali sed fornicario.”

65. Peter von Matt, *Die Intrige: Theorie und Praxis der Hinterlist* (Munich, 2006), 330ff.

66. RPG 1.579.

fell in love and apparently carried on an affair over the course of many years; the cuckold seems not to have noticed a thing. Anna and Bartholomeus were smitten with each other. When they had begun their affair (*cum in huiusmodi adulterio sic essent cepti*) while the legitimate husband was still alive, the lover gave his admirer a hand-written paper note (paper had long since supplanted the expensive parchment in everyday use) in order to assure her that he would marry her after Bertold's death. The note was not dated and also, we are told, not sealed (Bartholomeus evidently belonged to a social group that had a seal; he was thus not a member of the lower class), but according to canon law even the very existence of such a pledge ruled out any future marriage for the two lovers. As a rule, when a scandalous, sinful relationship of this kind became known to the community, the spiritual courts punished it with public excommunication, the exclusion from the community of all Christians; the priest denied the sacraments to the excommunicates.⁶⁷

Already the *Decretum Gratiani* compiled around 1140 devoted an entire series of examples to the question of the legal consequences of adultery.⁶⁸ Right at the beginning of the pertinent section, the principle that an adulterer may not marry his or her lover even after the death of a spouse is attributed to Pope Leo, although it in fact comes from canon 51 of the synod held in Frankish Tribur in 895. One also reads in Gratian that a pledge of marriage given during the lifetime of a husband barred the participants from marriage (C.31 q.4). In the decretals, an entire title in the fourth book of the *Liber Extra* is devoted to the theme (X 4.7). As the case of Anna, Bertold, and Bartholomeus shows, a related legal issue was whether the adulterous lovers had a hand in the faithful partner's death. The prohibition to marry again in such cases of spousal murder is directly expressed in only one of Pope Alexander III's decisions; it is expressed only hypothetically but with the same formula as in the later penitentiary supplications in canons 6–7 going back to Innocent III. The decretal text going back to Clement III, which forbade adulterers from marrying again with the words "when one of the two causes the death

67. One such case is in RPG 6.1780.

68. *Decretum Gratiani* C.31 q.1.

of the spouse and both have already pledged marriage during the said spouse's lifetime," is brought to bear in many relevant supplications. When couples in the wrong admitted adultery in their supplications, they regularly pointed out that they were innocent in the death of the deceased marriage partner, as Anna and Bartholomeus did. He had indeed not killed Anna's husband (rather, the supplication states, Bertold had died of the plague). The matter of Bartholomeus's note nevertheless constituted the forbidden marriage pledge, and thus only a papal decision could come to the rescue. In clear knowledge of the applicable legal situation that spoke against them, after Bertold's death Bartholomeus and Anna had contracted the marriage as promised and also consummated it. They asked for a papal declaration that would protect them from all vile gossip that their marriage was not lawful.

The decision of the penitentiary is interesting and no routine matter. The major penitentiary, Cardinal Nikolaus Albercati, who had signed the supplication, was, by all appearances, not entirely sure about the matter. In any case, he did not recognize the marriage contracted after Bertold's death without papal dispensation but called for an investigation in Constance. He wanted to agree to their request and absolve Anna and Bartholomeus only if it turned out from the investigation that the two petitioners were not implicated in Bertold's death; he nevertheless demanded that the two marry again after the absolution ensued. As for the rest, he transferred the case to the juristic experts of the papal chancery, the *correctores*, so that they could check how the penitentiary had decided similar cases. Did comparable supplications really come only rarely to be decided in the penitentiary? This clearly was not the case, as the following examples show.

In the year 1452, Leonhard Eglinger from Freising and Wandala also confessed to having entered into an adulterous relationship and to having pledged to get married in case Wandala's husband, Conrad Sprenger, passed away.⁶⁹ They did this even though—and indeed in full awareness that—they were thereby violating canon law and

69. RPG 2.911.

could not remain in a union contracted in that way without a papal dispensation. In their supplication, in accord with the cited decretal by Clement III, they accented the fact that neither of them had brought about Conrad's death but rather that he had died a natural death. The penitentiary absolved the couple of adultery through the signature of Cardinal Capranica and granted permission that they could remain in their marriage with the usual add-on of the legitimization of their children. The sentence from the above-cited decretal, that none of the adulterers had willingly brought about the death of the partner who had been cheated on, thus became a standard accessory in all pertinent supplications.

Another story of this kind took place in Venice.⁷⁰ In the metropolis on the Adriatic, a center of international trade, a German merchant from Nurnberg pursued his business, selling the classic products of his city, iron and weapons. Perhaps his office was found in the Fondaco dei Tedeschi on the Rialto. In the lagoon city, which was easygoing when it came to the customs and morals of its inhabitants, he had met a certain Katherina. She was married, however, to another foreigner, Antonellus from Milan. As their affair continued on, they pledged marriage in the case that Antonellus, Katherina's husband, should die. So it happened, and in order now to legalize their relationship, they successfully pleaded from the curia absolution and dispensation for their marriage. In 1471, another German living in Venice, this one from Augsburg, a certain Elisabeth Henrici, also asked for absolution for adultery. She had gotten involved with a Georg Johannis while her husband was still living. The short supplication does not say whether she had then also married him. Johannes Knotzinger from the archbishopric of Salzburg had found out only after his wedding that his wife, Margarete, had sent her first husband into the hereafter. Since the two had united themselves to each other clandestinely, Margarete had to request absolution from spousal murder, and both had to request the same grace because of their secret marriage.⁷¹

If an adulterous couple had married after the death of the *ter-*

70. RPG 3.414 (year 1457).

71. Venice: RG 9.1453; Salzburg: RPG 7.1999.

zo *incommodo*, the hoped-for happiness of a second marriage oftentimes did not transpire, which then could lead to further legal complications. At least that was the case with Conrad Scheyt and Anna Schmalczlin from the diocese of Freising, whose relationship I already talked about.⁷² When the two wrote a supplication in the year 1465 to Pope Paul II, they confessed to having had an adulterous relationship while Anna's husband was still alive. After Anna's first husband's death, they entered into a marriage, which in technical canonical terminology was only a *matrimonium praesumptum*. They stressed now, with the precise words of the decretal of Clement III, their innocence in the death of the husband who had been cheated on. But Konrad was no longer satisfied with his former lover now bound to him in marriage; he also approached her sister and had sexual intercourse with her. This created a new impediment between Anna and Konrad, namely, kinship by marriage in the second degree. It was clear to both that they could not remain together without papal absolution and dispensation. They thus turned to the pope and secured the help of a proctor trained in canon law for the composition of their supplication. He appealed to an important maxim of canon law in their favor already known to us: "A degree of relationship obtained does not dissolve an existing marriage." In the case of Konrad and Anna, the penitentiary came to a remarkable decision. It conferred only absolution but did not grant a dispensation. Since it evidently counted on the two not separating, however, it advised (only the woman!) not to refuse the *debitum coniugale*, but to give in to him "with a sad heart." Konrad, however, could not of his own accord demand the act of love from his wife. One might very well doubt whether the couple behaved accordingly.

In summary, adulterous relationships were regularly topics of discussion in the supplications of the penitentiary.⁷³ In order to remove the legal hurdles that stood in the way of a marriage after the faithful spouse died, the couples who had strayed made assurances in their

72. RPG 5.1089.

73. Cf. also RPG 3.1745 (year 1455); 3.1906 (year 1456), where the pardon is granted *sola signatura*, that is, without the issuing of a *littera*, because the petitioners from Cologne counted as *pauperes*.

supplications, presumably at the advice of their proctors, that they had not been involved in the death of the cuckold in any way. Moreover, with few exceptions (including the cases mentioned above), they asserted that they had never during the third person's lifetime given each other a pledge to get married later. Otherwise, the requested pardon would have been difficult to obtain. Every now and again they also claimed in the supplications, as a couple from Liège did in 1481, that they had not known that they could not simply get married after the spouse died if they had promised to marry to each other.⁷⁴ When such a pledge of marriage could be proven to exist, the couple evidently simply lived together without legalizing their status through the church. Hermann Reychenberger and Barbara from Mainz spent twelve years with each other in concubinage after the death of Barbara's first husband, whose name, Oswald Baumgartner, is even mentioned in the supplication, before they submitted a supplication in 1456 with the goal of having their relationship sanitized.⁷⁵ The question of why this step was taken up only after so many years of living together uncanonically cannot be answered. Nevertheless it happened that the penitentiary placed conditions for the granting of pardons for a marriage between adulterers—for instance, that a composition had to be paid and the marriage had to be newly and formally contracted, as was the case in an example from Mainz from the year 1460.⁷⁶ Only rarely did couples in the wrong that had lived in an adulterous relationship turn to the penitentiary before getting married.⁷⁷

If word got out about adulterous relationships, every official had the duty to step in judicially and to put an end to the sinful behavior of the couple. A supplication from the bishopric of Speyer makes definitively clear what stages such an unfortunate relationship had to go through before the two sinners could live in peace with the church. It also reveals the various phases of a relationship extending over years. While his wife was still alive, Bernhard Rusz promised a certain Katherina that he would marry her after his wife died.

74. RPG 6.1708.

75. RPG 3.1815.

76. RPG 4.376.

77. A rare example is given in RPG 4.794 (year 1464).

After this pledge, Katherina became his lover and had several children by Bernhard. When his wife died, he first took Katherina into his house as a concubine and produced additional children with her. Then, as promised, he concluded a marriage contract *de praesenti* and confirmed this by sleeping with Katherina again, but this act now possessed a different quality, since it sealed an indeed uncanonically but nevertheless validly contracted marriage. The *matrimonium praesumptum* contracted entirely without ecclesiastical participation brought the tap to overflowing. The official of Speyer opened a process against the two and decreed a separation in court. But Bernhard and his wife did not think of following this judgment and continued their "cohabitation," as the text of the supplication names their *ménage*. With the usual reasoning, that neither of the two was an accessory to the death of Bernhard's first wife, they made an application to the pope for the approval to continue in their marriage. Astonishingly, this was granted them without the payment of a composition and with the blessing of the pope (*expresso*). It is however probable that the *littera*, which is not extant, contained additional punishments.⁷⁸

When Spouses Disappear

Could a partner who had been left marry again if the spouse had disappeared without a trace? This was in no way only a theoretical question in the late Middle Ages. Contrary to all older views of the stable, immobile, stationary agrarian world, the supplications registered in the papal curia contain not a few accounts of men or women leaving a spouse unwillingly or of their own accord. Besides many kinds of individual motivations for this phenomenon, there were also several objective grounds, above all epidemic and war. The repeated waves of the plague and the associated decrease of population after the middle of the fourteenth century, and the long-lasting military conflicts in the west (the Hundred Years' War between England and France, the Burgundian Wars) as in the east (the Hussite

78. RPG 7.1973.

Wars, the invasion of the Turks), forced large numbers of people to leave their ancestral homelands. From their supplications, we discover in dramatic reports how individual families and married couples were affected, above all by the wars with the Turks.

Georg Petersdorffer lived with his family in the city of Judenburg, lying to the west of Graz in the Steiermark, which territory was affected multiple times by Turkish attacks in the early 1470s.⁷⁹ In one of the raids by troops of the crescent moon, his wife, Elisabeth, and another inhabitant of the city, Leonard Strauburger, fell into the hands of the Turks. While Leonard managed to escape and return to Judenburg, Elisabeth suffered a sad fate. Leonard reported on her gruesome death; she had been beheaded by the Turks. After this, Georg publicly married a certain Afra, daughter of Conrad Oedinger, from the bishopric of Passau, but without consummating the marriage with her. First he wanted to have certainty from the penitentiary that he could rightfully and legally enter into this marriage with Afra. According to a decretal of Pope Lucius III (1181–85), which was received into the *Liber Extra* under the title *De secundis nuptiis* (X 4.21.2), a second marriage could be contracted in such a case only once the death of the first spouse was certain.⁸⁰ The Roman pardon office permitted this to Leonard in 1481 so long as certain news of his first wife's death existed. The officialate court of Salzburg, to whom his supplication was delivered, was supposed to investigate this.

Raids of marauding Turkish troops especially affected the area of the patriarchate of Aquileia with its isle of German settlement in the southeastern region of the Alps. In one of these surprise attacks, the Turks kidnapped numerous men and also the wife of a certain Thomas, parishioner of St. Nicolai in the city of Lichtenwald.⁸¹ In his supplication from the year 1482 to Pope Sixtus IV, Thomas complained that there was no hope that she would ever return. The man probably had a household and children to take care of. It was no surprise that he welcomed a Katherina from his hometown into his house

79. RPG 6.3733.

80. Cf. Kuttner, *Kanonistische Schuldlehre*, 160 ff.

81. RPG 6.3765.

and also shared a bed and had children with her. Then, when several of the abducted men returned to Lichtenwald, they brought with them news that his wife had been decapitated by the Turks. Now a widower, Thomas desired to legalize his relationship and asked for a papal *littera* with the declaration that his marriage no longer existed and that he could ecclesiastically marry Katherina. The officials of the penitentiary held to the maxim of Pope Lucius III, charging the *ordinarius* with permitting the second marriage as soon as "it is certain that the petitioner had received news of the death of his wife from a reliable messenger."

Apart from external factors such as wars, feuds, or natural catastrophes that destroyed marriages, the supplications lead one to discover many details about very individual cases of a man or woman walking away; most of the time, unfortunately, more specific reasons for the departure are not given. Margarete, a baker's daughter, who was married to a Nicolas, after some time ran off with another man, without Nicolas being able to give a reason for it. His wife had been separated from him for seven years and resided in some unknown place, as Nicolas complained in his supplication in 1475.⁸² He had done everything in his power to find her again, but he could not get any information as to whether she was alive or dead. This was the reason for his supplication. According to the already cited decretal of Pope Lucius III and in absolute conformity with the church's doctrine of the indissolubility of every marriage, Nicolas would have been forced to live with Margarete again even after seven years if she were to return to him. The decretal read, "He who knows that his first wife is alive must give up his second."⁸³ As long as doubts existed as to the death of his wife, he could not enter into a second marriage. And precisely for this reason he had sought after a dispensation in Rome. The decision of the penitentiary was negative, as was to be expected; the ordinary in charge, the bishop of Olmütz, was to proceed according to the law. In this way, the penitentiary had formally accepted Nicolas's request, but by referring the request back to the local bishop, it had in fact rejected it. Pope Lucius III's decretal also applied to this case.

82. RPG 6.2520.

83. X 4.21.2: "Qui scit primam uxorem vivere, secundam dimittere debet."

Johannes Wadener from the bishopric of Constance reported another story of suffering to Pope Eugenius IV in June 1442.⁸⁴ A few months after his wedding, his wife simply walked away from the marriage bed “out of imprudence” and wandered around for years in foreign lands without returning to him. What might have moved the wife to do this? Had her husband beat or mistreated her, behavior often mentioned in diocesan marriage processes? Had the marriage been arranged by the parents against her will? Had she found a new love and cut and run with him? All of these reasons repeatedly come to expression in late medieval marriage processes. Johannes, however, gave no explanation for why he had been left by his young wife. After a certain period of time, Johannes married again, this time to Anna Biegentzerin, who likewise lived in the diocese of Constance. Unfortunately Johannes does not tell us whether he did this with or without dispensation. But suddenly and unexpectedly his first wife showed up again. According to ecclesiastical legal provisions, the second marriage contracted with Anna was consequently invalid. We have seen that the canon law in force and accordingly the practice of all marriage courts, both diocesan as well as papal, in such a case forced the party who had married again to return to the first partner. One may assume that this also occurred in the case of our Johannes. He had to send his second wife, Anna, away and take up married life again with the first. Unfortunately, Johannes does not reveal in his report to the penitentiary how long his “marital bliss” or passion with the first wife now lasted. But when she soon afterwards died, he returned immediately to the second, Anna, and asked for the license to be able to contract a marriage with her again (and this time lawfully as a widower). The major penitentiary immediately agreed to his request on the basis of the authority granted to him by the pope, which can be gathered from the formula *fiat de speciali*, and thus had no reason to issue a *littera declaratoria*, which the petitioner and his proctor had asked for.⁸⁵

Johannes Maitinger from the Diocese of Brandenburg met with

84. RPG 1.726.

85. A comparable case had played itself out in Constance in 1442 and was ruled on by the official there (REC 10554).

a comparable fate around 1450, as did Anna from Gdańsk around 1490.⁸⁶ Johannes's wife, Brigida, whom he had married around 1435 and who came from a neighboring bishopric, the diocese of Hildesheim, ran off without explanation; when is not said. For fourteen years the couple lived apart until they met again, evidently by chance, in Halberstadt in 1449. After the long separation, Johannes had no desire to take up marital life with Brigida again. He preferred instead to enter the spiritual state and receive ecclesiastical orders. According to canon law, such a step was permitted only when the wife also committed herself to joining an order or at least took a ceremonial vow of chastity. Since Brigida, according to her husband's words, committed herself to this in writing before a notary, he had the permission to be ordained a priest. Anna from Gdańsk had been left by her husband, Georg, who had "set out into distant lands," as she writes in her supplication. Since Anna could not live alone "because of her youth and the weakness of the flesh (*fragilitate carnis*)," she searched for Georg and received news that he had died, for which reason she wedded Mathias. After twelve years, Georg appeared once more, and, according to canon law, Anna found herself obligated to return to him. But since Georg "passed away after a few days and neither Anna nor Mathias had a part in his death," she received from the regent of the penitentiary the permission to remain married.

The permission to allow a second marriage despite a still-existing marriage to a partner whose husband or wife had long since disappeared, which the penitentiary at times granted, as in the cases just considered, led to, among other complaints, a reproach in the grievances of the German nation in the 1520s. The princes bemoaned the fact that the spiritual judges in this way "indirectly tolerated bigamy and adultery," because the decision was made without it being first found out whether the person was still alive. The above-mentioned examples make such a reproach appear rather unfounded.⁸⁷ Nevertheless, we do know from the officialate court acts of Freising of a

86. Brandenburg: RPG 2.252; Gdańsk: RPG 7.2158.

87. Albert, *Der gemeine Mann*, 299. Reichstagsakten, Newer Series II, 96, Article 91.

decision by the marriage judge there, who on June 7, 1492 allowed a couple from Munich to live together even though the death of the husband's first wife could not be proven.⁸⁸ Johannes Schwab had married a certain Elisabeth from Augsburg publicly and with all ecclesiastical ceremony thirteen years before. After six years, Elisabeth walked away from her husband, who had already during their marriage begun a relationship with an Agnes Pflueglerin and had promised to marry her if his Elisabeth died. The concubinage of Johannes and Agnes was "tolerated" by the court until Elisabeth should return or until there should be certain news of her death. The cited article in the grievances (Article 91) also speaks of *toleramus*. The husband could not demand the *debitum coniugale*, whereas he could sleep with Agnes if she wished it, but only with a heavy heart (*cum merore cordis*). It seems many officialate courts interpreted canon law leniently in these cases.

It becomes clear from the supplications analyzed up to this point that everyday scenes of many marriages came to light before the diocesan officialate courts as also at the tribunal of the penitentiary, and these scenes were not handed down in other historical sources. One could dismiss this revelation of everyday life circumstances in the courts as what should be expected as an anthropological constant, but, in a time in which *Ego-Dokumenten*, on the whole, are scarce, these very personal utterances are highly welcome to the historian. Simon Granar and Margarete Wermerin from Warmia had duly married and consummated their marriage before 1484.⁸⁹ Still prior to the ceremonial wedding celebration, Simon left his young wife and, "not out of religious zeal but because of a marital disagreement," entered into a Franciscan convent as a convert, that is, as a lay brother. He must have spent at least a year there, and then he cast off this profession as well. Margarete understandably did not simply accept her husband's escapade but brought suit before the officialate court and reclaimed him as her legitimate husband. As we will see, she did so rightfully and with success. She argued in her

88. AEMF, Heckenstallersammlung, vol. 226.

89. RPG 6.3820.

supplication that she had never given her approval to her husband's entrance among the mendicant friars and did not think of giving him up for the spiritual way of life, for she was still young and wanted to have children. Simon could do nothing but eat his humble pie: he left the convent of the Minorites, for a duly contracted marriage could not be dissolved one-sidedly by one of the partners; the spouse also had to enter a monastery, as will be explained later. This was a firm principle of every one of the penitentiary's decisions.

After several years of married life, Margarete Herlin's husband, Mathias, simply ran off, "perhaps because of their poverty or out of despair." With these words, Margarete, from the diocese of Salzburg, made her complaint in her supplication registered in 1475.⁹⁰ For ten years now, she had lived alone, but she was still young and wanted to have children. She had inquired after her Mathias in the surrounding lands in vain. Finally, she received some information that he had died abroad. As a result, she had contracted a new marriage with Johannes Brechover and lived several years with him. Then Mathias suddenly appeared again in his homeland. Was Margarete now, after so many years, obligated to return to him, as canon law demanded? Since Mathias never reclaimed her as his wife and in the meantime died without doing so, she asked for her marriage with her second husband to be declared valid, which was granted to her with the pope's approval (*expresso*).

The story of Alban and Ursula from the baptismal parish of Brixen came to a happy end. They had correctly married according to law without knowing about an impediment. After some time, however, Ursula left her husband. The supplication does not state a reason for this; she apparently acted on her own initiative—she was in any case not faced with any ecclesiastical judgment—in order "to enter into a marriage or, better, a concubinage (*contubernium*)," as the text of the supplication correctly formulates it, with Alban's brother Wolfgang. The bishop heard about this and took care that the two were separated by order of the court, with the result that Ursula penitently returned to Alban. In the course of the process, it also came to light

90. RPG 6.564.

that, more than this, the two were related by marriage in a forbidden degree, so that they had to seek a dispensation in Rome.⁹¹ The degree of relationship was higher than what was stated in the first supplication (third instead of fourth), so that the officialate court of Brixen had to decline the first *littera* issued in Rome. Alban and Ursula had to apply once more to the Roman well of grace and correct the statements in a *reformatio* with the utmost speed in order to have themselves freed from all punishments and to be granted permission to contract a new marriage. The papal datary still imposed on them the payment of a composition as punishment.⁹²

Mobility characterized the late medieval trades. Above all, German bakers and cobblers found opportunity and work on the other side of the Alps. Besides tradesmen, many clerics wanting to be ordained also migrated south. We have already heard of young men who had ecclesiastical consecration conferred on them at the Roman curia. Apparently, however, "the urge to go south" also grasped hold of "the common man," any Jack or Jane. Dorothea von Boppingen, for example, left her husband, Johannes Dreszler, with whom she had contracted a valid marriage somewhere in the bishopric of Constance long before the year 1487, and moved to Italy.⁹³ There she soon met Jodok Grunwald, a man from the bishopric of Freising, who had similarly made the trek over the Alps. The two lived several years in concubinage in the area of the diocese of Treviso, without bothering any authority where they lived about it. In the supplication, the following dialogue between the two is recounted: "One day, she asked Jodok, 'Do you want to marry me in the case that my husband dies?' He answered her, 'I do want to marry you if you bear me a son.' She thus said again to him, 'Give me a pledge and take my hand [to show] that you want to take me as your wife.' The two thus made a mutual pledge of marriage and continued their concubinage for several years." How did the matter turn out?

At some point they discovered that Dorothea's first husband, Johannes, had died in the empire. Perhaps Dorothea had given birth

91. RPG 7.1145 (November 26, 1490).

92. RPG 7.1195 (February 28, 1491).

93. RPG 7.2553.

to the son and heir longed for by Jodok. In the meantime, however, she seems to have distanced herself from the marriage pledge. In any case, Jodok brought suit against her before the vicar of the bishop of Treviso to have her adhere to the pledge. Although Dorothea no longer wanted him as a husband, forced by the court of Treviso in public, she now had to marry Jodok in the church with an exchange of rings. They lived together "in this marriage or concubinage," as the supplication says. Dorothea suddenly experienced pricks of conscience because she had pledged marriage to Jodok while her first husband was still alive, which (as we know) was forbidden by canon law. She asserted that she could no longer live with Jodok in good conscience. For this reason, she proposed a separation so that she could marry another man. How this story further developed could only be gathered from the archives of Treviso, for, according to the instruction of the regent and the auditor of the penitentiary, their case was handed over to the bishop there for investigation and a final decision.

Bigamists

One reads repeatedly in the supplications to the pope of women who, although they had lived in a publicly consecrated and consummated, indissoluble marriage, walked away from their husband free as birds and, keeping silent about that union, successfully sought out a new husband somewhere else. More rarely it was men who behaved in this way. The reasons for such behavior are unfortunately never mentioned in the supplications. The big cities of southern Germany lived off immigration; social controls were not as strong there as in the country. The trade metropolises of Nurnberg and Augsburg, for instance, offered some possibility to change one's identity more or less unnoticed. Andreas Müller from the bishopric of Bamberg, in which the great imperial city of Nurnberg also was located, fell in with such a bigamist.⁹⁴ He had contracted a marriage in due form (*publice*) with a certain Gern Schultheißen, likewise from the diocese

94. RPG 6.3596 (year 1476); a similar case in 6.3586.

of Bamberg. Andreas was under the impression that Gern was still single. The two had nevertheless not yet consummated the marriage, which is correctly termed *contubernium* in the supplication. Soon Andreas got wind that Gern had already been married once and that her first husband was still alive. He dragged her before a secular court, not the officialate court. Gern admitted that she was married to another man and had children from him. Under these circumstances, Andreas did not want to and could not marry the woman; he asked for and received from the penitentiary a declaration that he was free to marry another woman.

Agnes from Agrano in the southern part of the bishopric of Chur must also have been tired of her marriage. She had married a Betollus from Agrano and consummated her marriage with him.⁹⁵ That did not stop her from soon keeping her eyes out for another husband. She met Janetus, son of a Johannes de Sierre, to whom she revealed nothing of her already validly contracted marriage to Bettollus, but soon entered into a *contubernium* (as the supplication calls it) with him *per verba de praesenti* and afterwards also shared her bed with him. When Janetus found out about the bigamy, he beseeched the Roman penitential court to allow him to join himself in marriage to another woman and bear children with her. One would like to know how this striking case of a double marriage was decided before the officialate in Chur, but, unfortunately, the information is not available.

As a rule, it has in all times been easier for married men to leave their wives behind than vice versa, even though, in the examples just mentioned, it was women who walked away from their marriages. In the late Middle Ages, the lords of creation did not let themselves, even by the judgment of an ecclesiastical court, be prevented from turning their backs on a woman, whether she be wife, lover, or only a chance flirtation. In a supplication to the pope from December 25, 1464, Johannes Hardecker confessed that he was a bigamist.⁹⁶ After the banns of marriage, he had in due form contracted

95. RPG 6.3764 (year 1482).

96. RPG 5.1950.

a marriage *per verba de praesenti* with Anna Gerlochin, consummated it, and had children. The couple did not, however, celebrate the *sollemnisatio*; nor did they live together. Instead, Johannes set out “abroad.” That could have been the neighboring, bigger city, a university, or a fair. Merchants and tradesmen—like Johannes as well, perhaps—were mobile because of their vocation. After some time, “he let Anna go,” as he expressed it, and married Margareta Herdingen from the diocese of Eichstätt, likewise *per verba de praesenti*, and consummated the relationship, according to canon law correctly described as a *contubernium*, through the *copula carnalis*. He later explained to the pope that he wanted to return to his first wife, as was fitting, and to have that marriage celebrated in a church, which had not occurred up to that point in time. For this reason, he asked for absolution from the *fornicatio* with Margareta and for confirmation that the relationship with her did not constitute a marriage. After the investigation of the auditor, the request signed by the major penitentiary went to the bishop of Bamberg. He was supposed to summon the individuals concerned, including Margareta, and clarify whether the marriage to Anna was chronologically earlier. If that was the case, he could approve the request. The Roman pardon office had already imposed a punishment on him. Johannes had to fast on bread and water for forty days every year for seven years.

Processes hauled before the officialate courts could seem confused and contradictory, even if female bigamists understandably did their utmost to get one husband awarded. This is seen in a supplication of Conrad Preninger from Constance.⁹⁷ He admitted to having carried on a relationship with a Margareta Windemecherin for a long time, but he supposedly had not known that his lover was at the time already married to Jodok Messerschmidt from Augsburg, which she had apparently kept secret. It seems questionable whether Margareta’s first marriage had been contracted lawfully. She wanted to devote herself to Conrad, however, only on the condition that he promised to marry her later. For his part, Conrad denied that he had ever had the intention to marry Margareta; he claimed to have been

97. RPG 6.3608.

interested only in sex with her. Since his bedmate could not manage to draw him willingly before the altar, she sued Conrad before the episcopal court with the claim that he was her legitimate husband. The official of Constance initiated a proper process, in which Margareta's marriage to the man from Augsburg was not mentioned. Since the evidence clearly spoke for Margareta, the official made two judgments in her favor, which also went into effect, since Conrad had neglected to make an appeal punctually. Margareta had, it seems, attained her goal and gotten Conrad as her husband. When this judgment became known to Jodok Messerschmidt, Margareta's first husband, he sued Conrad and Margareta before the official and the vicar general of his bishop in Augsburg. A definitive judgment resulted from this process, in which the official determined that Margareta and Jodok were a married couple, whereupon the couple consummated their marriage, which they evidently had not yet done previously. Conrad seemed to be just fine with that. He now asked the pope for a *littera* containing a statement that no marital union existed between him and Margareta, since he had never pledged to marry her, and that he could contract a marriage with another woman. The regent as well as the auditor of the penitentiary agreed if the episcopal court should in fact determine that the marriage pledge *per verba de praesenti* between Margareta and Jodok had occurred before she had slept with Conrad. The judgment in Constance would thus be revoked, and Conrad would once more be a free man.

Abandoned wives not only lived without a husband but also could get into an overabundance of conflict with their parish priest. Prior to 1491, Anna Roderici had successfully filed suit before the officialate court of Strasburg for the existence of a marriage with a Johannes Terlacker, which was only rarely the case in processes of this kind.⁹⁸ Although the judge had made a definitive judgment that the two "had lived as a legitimate married couple," and Anna had also already made a statement to that effect, the husband denied it. Anna thus could not make the judgment effectual, "although she still very much wanted to do so." After that the priest of her parish forbade

98. RPG 7.2275.

the poor Anna to take communion. For this reason, she asked the penitentiary as the superior authority to urge the pastor to give her the sacrament.

Konrad Rayner from Constance, who was twice rebuffed in his wooing of Elisabeth Prunner, was also a bigamist.⁹⁹ The pair had secretly promised to marry each other *per verba de praesenti*, but they had not consummated the marriage. When he wanted to take Elisabeth home, she refused, whereupon Konrad brought charges against his bride before the officialate court for the confirmation of their marriage and the fulfillment of marital duties. In front of the court, she denied that a marital bond existed between them and confirmed her statement on this matter with an oath. The official heard both sides and decided in favor of Elisabeth. According to Konrad's information in his supplication, after two years the process repeated itself. The two secretly pledged once more to marry, Elisabeth refused to consummate this through the *copula carnalis*, she denied again before the court that she had ever made a pledge of marriage, and the judge came once more to the same judgment. That was too much for Konrad; he forgot his bride and married, again clandestinely, another Elisabeth, surnamed Kettenackerin, and moved in with her. The first Elisabeth also found a spouse, whom she married in public. Both couples lived peacefully for several years until Elisabeth Prunner's husband died. Now the old affection for the twice-married Konrad seemed to come alive again in the first Elisabeth; in any case, she confessed on her sickbed or in confession (the supplication says *confessa fuit*) that Konrad was in truth her legitimate husband. It is not apparent from the sources how this could be squared with her two-fold denial several years previously. Konrad in fact asked the penitentiary for the confirmation of his marriage with Elisabeth Prunner and wanted to "release" Elisabeth Kettenackerin, for he had led a bigamist *contubernium* with her. The upshot of the process referred back to the bishop of Constance remains unknown, because of the lack of other sources. The regent had, nevertheless, instructed the bishop in 1474 to decide as Konrad wished if it came to light at

99. RPG 6.2528.

court that a valid marriage had existed between him and Elisabeth Prunner.

Things were even more confusing in another case.¹⁰⁰ Michael Fleischer from Constance had deflowered a girl by the name of Elisabeth Leverin before he married Margareta Dietrichin. Afterwards Elisabeth wanted nothing more to do with Michael, or so he claimed; thus she seemed to have absolutely no desire to enter into a marriage with him. Later, however, when Michael and Margareta had already been married for some time and had children, "Elisabeth allowed," the supplication says, "him to sleep with her and had children with him." If one correctly interprets the text, here is a clear case of bigamy in the modern sense. That was absolutely not the case in the law of 1470, for Michael and Margareta had not made their union known in a ceremonial way (*sollemnizare*); their cohabitation did not yet count as a canonically indisputable marriage but as a *contubernium*. For this reason Elisabeth, who had now changed her mind, appears to have dragged Michael to court. Michael denied any intention of marriage in the relationship with Elisabeth and asked the pope to command the bishop of Constance to investigate the situation. If the official were to view it as given that the union between Michael and Margareta was a *matrimonium validum*, then he could clarify in the name of the pope that no marriage existed between Michael and Elisabeth. In addition, then one could evade a bigamy practiced for years. The Roman auditor, Antonius de Grassis, complied with the request and ordered such a process in Constance, from which we unfortunately do not know what the results were for the participants.

Violence against Women

As many legal documents unfortunately demonstrate, wives and servant girls regularly became victims of domestic abuse. Canon law did forbid men from beating their wives, but *saevitia*, brutal treatment by husbands, was the order of the day.¹⁰¹ Officially, in cases of

100. RPG 5.2171.

101. On this point, cf. Henry Ansgar Kelly, "Medieval Laws and Views of

proven *saevitia*, couples were ordinarily ordered to separate for a designated period of time in order to protect the woman from the abusive husband. In such cases, the parish priest was expressly instructed not to keep the sacraments from the wife living separately.¹⁰² In society at large, however, it seems to have been considered the indisputable right of the husband to punish and strike his wife and even beat her to a pulp. Conduct of this kind was quite common not only in lower social classes but also “in the best circles,” in the nobility. The case of an Anna from the house of the count of Erstein, the seat of the former imperial abbey, in Alsace teaches us this. Anna found herself compelled to direct a supplication to Pope Sixtus IV. It dates from June 8, 1476.¹⁰³ Many years before, she had married the burgrave Hugo von Luentz and had children with him. Count Hugo, according to the words of the supplication, treated his wife “depravedly, unjustly, and vilely” to the point that she feared for her life. Fed up with her suffering, she left her husband and returned to her parents, where she lived for several years. She had always been willing, she explained in the supplication, to return to Hugo if he would guarantee safety for her body and life, and she wanted to “grant him marital affection,” which she had repeatedly assured him. For his part, Hugo brought charges against Anna for taking valuable possessions with her from his property. He managed to have a judge at the Roman curia excommunicate Anna for contumacy, that is, failure to appear at court. Because she did not immediately react to this, the excommunication was repeated twice and strengthened. Only at this point did Anna appeal the sentence to the pope. While her appeal was still in the air, Hugo died—lucky her, one might add. She now asked for absolution from the punishments inflicted on her, which she naturally also obtained.

Wife-Beating,” in *Proceedings of the 10th International Congress of Medieval Canon Law*, ed. Kenneth Pennington, Stanley Chodorow, and Keith Kendall (Monumenta Iuris Canonici, Series C: Subsidia 11; Vatican City, 2001), 1000.

102. An example of this from Nürtingen in the bishopric of Constance may be found in REC 15408 (1476–77).

103. RPG 6.2665 (year 1476).

Out of Marriage into the Priestly State

The reception of higher orders, which was already explained in chapter two, created a lasting marital impediment that led to separation. Lower orders were compatible with marriage—there were married clerics (*clerici coniugati*), especially numerous in France. Once a man received consecration as a subdeacon, however, he could no longer contract a valid marriage, just as a monk or nun who had entered into one of the recognized religious communities and had made a profession there could not. A valid marriage, however, created an impediment to consecration. A married man could not be consecrated during his wife's lifetime, and a wife could not enter into a cloister during the lifetime of her husband. Despite this clear-cut legal rule, the sources from the penitentiary's archives draw a very colorful picture of individual situations in the late medieval German Empire, in which oaths, the reception of orders, and the married condition came into conflict.

A way out of the indissoluble, life-long married communion did exist. Husband and wife could give up their married life in a mutual agreement and enter into the spiritual state. A married man could become a priest if his wife became a member of an order or at least ceremonially made an oath of eternal chastity, but only on this condition. Entrance into an order required the consent of both partners and additionally the approval of the pope—at least that was what was demanded in a decretal of Pope Innocent III received in the *Liber Extra* (X 3.31.19). Concrete examples for the employment of this legal principle are present in the supplications of the penitentiary. Particularly striking is the fact that, in the supplications in which a married couple expressed the desire to separate with papal approval because she wanted to enter into an order or he wanted to receive higher orders, the petitioners stressed that the woman entered into the marriage as a virgin.¹⁰⁴ According to a decretal of Pope Boniface VIII, married men seeking to become clerics must have contracted marriage with a virgin (*cum unica et virgine*; *Liber sextus* 3.2.1). If a

104. RPG 6.2217 (year 1473); 6.3365 (year 1483).

husband had the permission to receive orders, but the woman could not or did not want to become a nun but did take an oath of eternal chastity, then the episcopal judges *in partibus* made sure that the husband wanting to be consecrated guaranteed a sufficient living for her. In Constance in 1480, for example, the vicar general obligated a man who expressed the intention to be ordained a priest to guarantee a yearly alimony payment of four Rhenish florins to his wife, Anna Kämpflin.¹⁰⁵

Often the concrete cases detailed in the supplications are full of juristic tricks. Things were very complicated, for instance, in the case of Georg Eschener from the bishopric of Breslau.¹⁰⁶ He had already been married for several years to an Agnes from the bishopric of Salzburg when he landed in prison for a reason that is not stated. In this emergency situation, he made an oath to the Lord God that he would be consecrated a priest and live continently forever if he were to get out of jail. His wish was in fact fulfilled, and he was let go. He spoke with his wife about the oath and was able to convince her likewise to obligate herself to life-long chastity. In order to make their intentions a reality, they needed ecclesiastical permission. They thus turned to the archbishop of Salzburg, who, since Agnes had already surpassed her fortieth birthday, separated the two from each other (*separavit et divortiavit*), ordered the woman to return to her parents' house, and permitted the man to be ordained a priest. The archiepiscopal official added a condition, however: Georg and Agnes still had to get a dispensation of the apostolic see within two years. The judge of Salzburg of course was familiar with the pertinent canons and knew that the papal approval was a sure thing in this case. Georg thus personally made the trip to Rome, asked for dispensation, and was ordained a priest at the curia. Georg Eschener would have received lower and higher orders in the church of the hospital of the Holy Spirit at the Vatican. No confirmation of this information is found in the ordination register of the papal camera, the *Libri formatarum*, which unfortunately is preserved only piecemeal.

105. REC 15309.

106. RPG 6.3715 (year 1481).

Fate drove the cleric Petrus de Alleis, an Italian from the bishopric of Florence, in the opposite geographical direction to the north to Bolzano, which belonged to the bishopric of Trent at the time.¹⁰⁷ Numerous Italian merchants streamed to the markets of Bolzano. Petrus might have been connected with them. In a foreign land, the cleric, whose grade of consecration is not given, had begun an affair with Margarete Conradi, a virgin from the bishopric of Brixen, which ended with her bringing charges against Petrus before the mayoral court of Bolzano. Because of the considerable distance, she preferred the local secular court to the officialate court of Florence. This tribunal of Bolzano ensured that Petrus married the maiden Margarete and consummated the marriage according to all rules of canon law. The reluctant husband stressed, however, that he had contracted the marriage only under force and out of fear. So much for the background to the story. Nevertheless, Petrus had no desire to mess up as a husband in Bolzano; he simply wanted to make a clerical career and receive benefices. He had apparently persuaded Margarete to enter a cloister. Petrus claimed that she wanted to enter the female Dominican convent of Verona. He asked that his case be committed to “a proven and experienced cleric *in partibus ipsorum*.” The penitentiary did not give the commission to Verona, Florence, or Bolzano but to Nicolas of Cusa, the cardinal of San Pietro in Vincoli, in Rome; the major penitentiary decided this and moreover decreed that, if Margarete should make her profession in Verona, nothing would stand in Petrus’s way, in spite of the marriage in Bolzano, of receiving higher orders. For the solution to his problem, Petrus de Alleis had personally proceeded to the curia in Rome in January 1458. He escaped the married condition through his appeal to *vis et metus* and Margarete’s entrance among the Dominican nuns.

The Religious State and Marriage

Analogously to higher orders, the observance of the Benedictine or Augustinian Rule in a monastery or a profession made in the house

107. RPG 3.539.

of a mendicant order also counted as a lasting, separation-causing impediment to marriage. But under what circumstances did a valid profession materialize? The citizen of Freising Konrad Frysinger, after he had been a secular priest for five years, took the oath to enter a monastery and had in fact joined the Benedictines in Scheyern.¹⁰⁸ Then, before Konrad made his profession, the abbot released him from the monastery. He then married and had children. After consultation with the auditor, the penitentiary permitted him to remain in the marriage. This is an astonishing and, it seems, a singular decision. Had Konrad previously been laicized? Had the *character indelebilis* of his priestly consecration not held?

A further problem mentioned in the supplications that occupied the penitentiary consisted in the fact that not every religious community possessed an approved rule and a reliable, organizing structure that had remained constant over the years. On the edges of the established orders, men as well as women came together in loose communities not living according to the norms of papally recognized rules. The semi-religious, including the Third Order of mendicants and groups known as Beguines and Beghards, sometimes took the three classic vows of orders—poverty, chastity, and obedience—just like the main religious orders. Nevertheless, men and women left these communities in order to marry, as, for example, Elisabeth from Constance did around the year 1475.¹⁰⁹ Although she had pledged to keep the three oaths in a house living according to the rule of the Third Order of St. Francis and “in which *Begutten* [i.e., Beguines] or *Bisochen* were accustomed to live,” she got involved with Heinrich Schultheiß, ran away from the Beguine community, and became pregnant with his child. Both therefore secretly made a promise of marriage *per verba de praesenti* and then also consummated the marriage. What had validity now, the vow of chastity or the marriage? Evidently, the woman experienced a crisis of conscience and, not knowing the relevant regulations of canon law, for a time returned again to the Beguine community. When she received the correct in-

108. RPG 6.3454 (year 1471).

109. RPG 6.3564 and REC 14665a.

formation, namely, that her profession did not possess the forceful character of one in an established order, she turned to Rome. The pope through the regent of the penitentiary agreed in principle to her request to be able to remain in her marriage but referred her case as usual to the bishop of Constance first. There is no doubt that her profession in a papally unrecognized Beguine group was canonically inferior to the sacrament of marriage, as numerous other similar decisions of the penitentiary show. Elisabeth and Heinrich could remain a lawfully married couple.

On the question of the quality of an earlier monastic life and the binding force of a previously made profession, intricate questions of the applicability of papal decretals and constitutions played an important role.¹¹⁰ In any event, that was the case with Clemens Roet and Annalia from Schertzingen in the bishopric of Constance. Before his marriage to Annalia, Clemens had lived for ten years in houses of the Third Order of the Franciscans and made a profession shortly after his entrance into the order, certainly before the end of his year of probation. After his wedding, the order strove to bring a process against him before the bishop. In the course of the proceedings, the court clarified in precise form what the rules of the order and the form of the profession were and came to the conclusion that the marriage of Clemens and Annalia was valid. The judgment also contained, however, a sentence regarding the *debitum coniugale*, which might very well not have suited the couple. Clemens was not to demand it from his wife, and, if she wanted to sleep with him, "he was to let her have her wish with a heavy heart."

In this decision, much depended on whether Clemens at the time of his profession had taken the vow of chastity in ceremonial form. A very well-informed proctor devoted an excursus to this problem. In the course of the debate at court over the quality of the profession in the named order, the proctor cited a constitution of Pope Sixtus IV in which the pope had decreed that a profession made a full year after entering an order "was equivalent to a ceremonial vow." The brothers and sisters of the Third Order of Franciscans consequently could

110. RPG 7.2615.

no longer leave and marry, under penalty of excommunication. This regulation was in fact taken from the constitution of July 26, 1479 for the Third Order of Franciscans and Dominicans.¹¹¹ At the instigation of the order's proctor in Rome, the master of theology and professor Petrus de Radulphis, as the supplication says, a copy of the constitution was then publicized in the diocese of Constance, perhaps even as a broadsheet. After this excursus, the text of the supplication comes back once more to the concerns of Clemens and Annalia. Since the two had contracted their marriage, which had also been recognized as valid by the court's decision in Constance, *before* the publication of the pope's constitution, and since Clement's profession had been invalid because made before the end of his first year in the order, restrictions on the *debitum coniugale* had no force for them.

Although all ecclesiastics from subdeacons up had been forbidden since the First Lateran Council of 1123 from living with a woman,¹¹² the legal situation could be complicated if a cleric had been married before he received orders. Generally canon law recognized in marriage as a sacrament such a great good that the married could enter into a monastery or receive *ordines* only with mutual agreement. We encounter individual cases in the supplications in which the penitentiary made noteworthy exceptions from the prescriptions of the general council. Lambertus Rosar from the bishopric of Liège stated in a supplication dating from 1484 that he had contracted marriage with Jacobina Johannis.¹¹³ He later received ordination as a subdeacon and deacon, which we find out from the supplication without additional statements about reasons or circumstances. Actually, according to the canon law in force, such a step was not permissible because Lambertus had also, according to the information of the supplication, consummated the marriage with Johanna. At his request for absolution and for dispensation to allow him to remain in the *ordines*, the consummation notwithstanding, he surprisingly received a positive answer from the regent of the penitentiary, with the con-

111. *Bullarium Romanum* 3.173–76, here §8.

112. Canon 7; COD 191.1–5: “concubinarum et uxorum contubernia penitus interdicimus.”

113. RPG 6.3387.

dition, however, that he “never sleep with his wife of his own initiative, but he must fulfill her wish for marital embraces.” Picturing how the nights might have passed in Lambertus’s and Jacobina’s bed is left to the reader’s imagination. It is quite possible that the registered supplication did not contain all of the conditions under which Lambertus had been granted the pardon. A decision of the penitentiary bestowed with the signature formula *fiat de speciali* remains perplexing. It must, however, have been an exception which nevertheless was legitimated legally by the pope and the dicastery equipped by him with delegated *plenitudo potestatis*.

A supplication registered in 1477 of a priest from Reval named Tielman Vandost shows what juristic efforts a man who was married or lived in a marriage-like union (*matrimonium praesumptum*) had to undertake in order to get authorization to be ordained a priest according to all the rules of canon law.¹¹⁴ During his studies at the University of Louvain, he had met a virgin named Katherina vand Hofstadt and contracted a marriage *per verba de futuro* with her, in other words, an engagement. They later had children together, whereby their union in fact had become a valid marriage legally. Nevertheless, Tielman felt called to the priesthood. In response, after careful consideration and with the consent of her parents, Katherina took a vow of everlasting chastity at the hands of a priest of the house of Augustinian eremites in Louvain, took the habit of the Third Order of Franciscans, and became a member of their convent. Unfamiliar with the law, Tielman had himself consecrated a priest after this act by Katherina without approval of his bishop and without papal dispensation, performed Mass, and administered the sacraments. After he became aware of his error, he asked the pope for absolution and for authorization to be able to continue carrying out his priestly office. The major penitentiary granted him this pardon, as long as Katherina had already entered “a non-suspect age” or an order.

According to the witness of the supplications, the practice of “laicization” already existed at the time. Otherwise the following story would not make any sense. Before 1491, Nikolaus Tymmermans and

114. RPG 6.2719.

Katherina Sprunsen from the bishopric of Liège had found each other in a somewhat unusual way and ultimately asked the pope for a special decision that, nevertheless, was perfectly consistent with the system of canon law.¹¹⁵ Both had pledged marriage *per verba de futuro* and promised to honor the pledge *per verba de praesenti* under penalty of excommunication within the next forty days after the three-fold banns of marriage and to consummate the marriage. Apparently they could not wait that long and slept with each other, which nevertheless is not described as *fornicatio* in the supplication. Afterwards—and before the forty days were up—Nikolaus, who was already a simple cleric and tormented by a heavy conscience, fled to Rome and had himself ordained a priest there without saying anything about the proceedings in Liège. In the *Libri Formatarum*¹¹⁶ of the Vatican archives, one finds an entry stating that a *Nicolaus de Sancto Vito, perpetuus capellanus ad altare Sancti Eligii situm in ecclesia Sancti Viti Leodiensis diocesis* was ordained a priest on the basis of supplication from April 5, 1490. That could have been our Nikolaus Tymmermans. Katherina, however, did not consider giving Nikolaus up; she traveled after him and “demanded to have her husband back.” It seems that she managed to dissuade Nikolaus once more from his plans at the curia, for “the two married people,” we read in their supplication, “asked that priestly activities be forbidden Nikolaus, that the two could remain married, and that Katherina could compel her Nikolaus to live the married life [with her].” Since the couple was present in Rome, the penitentiary’s regent had investigated the delicate case himself. He might have determined from his own questioning of the couple that the engagement had become a valid marriage *de facto* when they slept together, and he agreed to grant the pardon in favor of the petitioners with *fiat de speciali*. Unfortunately, our curiosity about how the story of runaway Nikolaus and persistent Katherina continued cannot be satisfied.

Admittedly some of the stories from the supplication register, like the one just told, sound like fantastical poetic fictions. But they

115. RPG 7.2241.

116. ASV *Libri Formatarum* 10 fol. 122v, April 13, 1490.

aren't! No poet thought up the experiences of Nikolaus and Katharina; instead, life wrote their story. In contrast with novellas, tall tales, and campfire stories, we encounter in the supplications men and women of flesh and blood, who really lived and whose narratives we can thoroughly trust because their verity had to stand up to an investigation before the episcopal court in their homeland. The explanations of the suppliants could not deviate from the facts that could be verified *in partibus*; otherwise the wish for absolution and dispensation would not be able to be fulfilled and the conferring of a pardon would be out of the question. The stories from the Vatican archive would be worthy of any poet, including the following, which Wunandus de Harderwijk, a priest from the diocese of Utrecht, had put on record.¹¹⁷

At a young age, at the urging of his mother (he wrote in his supplication registered in Rome in 1452), he took an oath to receive ecclesiastical orders, later confirmed this intention, and first, as was typical, had the lower orders conferred on him. But then he became unfaithful to his oath and, in his opinion led astray by the Devil, secretly contracted a marriage with a widow. A short time later, this marriage was made public through an exchange of rings before witnesses and a notary, and the *matrimonium* was consummated when the couple slept together. The young husband, however, had thereby broken his oath and as a result soon found himself thrust into a difficult crisis of conscience. Even on the day after his wedding night, a horrific rash became noticeable on his right arm, which Wunandus described as a kind of leprosy and the outbreak of which he attributed to his breaking of his oath and considered a punishment from God. Seized with remorse, he left his wife, was immediately healed of the leprosy "in a wondrous way," and, without regard to his marriage, joined the Carthusian order, one of the strictest orders in the church. His weak constitution nevertheless could not handle the hard life of a Carthusian monk; after only six months, he left the monastery at the advice of the prior and the brothers. He made his way to Basel, where the council met from 1431 to 1449,

117. RPG 2.931.

and asked for absolution for leaving the monastery. Whether Wunandus received the permission from the council cannot with certainty be determined, because the acts of the council's penitentiary are not extant. One also finds out from his supplication that, in Basel, he received a *titulus fictus* in a simoniacal way, which means that he claimed untrue facts, like, for instance, the existence of a sinecure that did not in fact exist; and, more than this, he was consecrated subdeacon, deacon, and priest *extra tempora*, that is, outside of the times of the ecclesiastical year prescribed for consecration to higher orders, by a bishop who was a member of the council.

How did Wunandus's wife, whom he had left several months before, react? She could not come to terms with her husband's running off, searched for him, and ultimately, with the help of the bishop of Utrecht, tracked him down in Basel. Wunandus therefore fled the city of the council and wandered around in various regions of Christendom in the following years, during which time he added more offenses to his record. He held Masses, which he could not do without special permission, and even took over ecclesiastical prebends to which tasks of the *cura animarum* were attached, and in this way repeatedly violated canon law. In his wanderings, did he leave behind traces by which his statements could be verified? In at least one instance, it is possible to identify him in other sources. In 1443, Wunandus possessed the parish church of Lusch in the bishopric of Trier; then he resigned it for the benefit of a priest from the bishopric of Liège.¹¹⁸ The base value of this prebend was claimed to be six marks silver. Later Wunandus possessed other, still more considerable benefices in Italy.

For about ten years, he apparently wandered "successfully" through Europe and, because he had no proper title as an ecclesiastic, heaped up all possible ecclesiastical punishments and censures upon his head: excommunication and interdict, apostasy and *excessus*, the assumption of spiritual acts that he had no right to carry out. At the time of his supplication in early 1452, he found himself in Rome. After many years of wandering, he now sought his peace

118. RG 5.4500.

with the church and submitted himself to the judgment of the penitentiary. He was undecided as to whether he should return to his wife or follow his vow and live as a priest. In either case he had to seek after absolution from excommunication and the remission of all ecclesiastical punishments accumulated in the meantime. The judgment of the penitentiary, made by its leader, Cardinal Domenico Capranica, was remarkable. As punishment, he had to pay a *compositio* to the representative of the pope in Rome, the *vicarius Sancti Petri*, a reparation for the unlawful salary from the prebends that had gone on for years. Even though the amount of the fine is unknown, the Vatican register shows that he did not stand there as a poor wretch after these years of wandering. At the curia, as a former Carmelite, Wunandus was referred to Nicolaus de Asmundo, a minor penitentiary of his former order, who was active at St. Peter's.¹¹⁹ Nicolaus had looked into the case and also informed himself about Wunandus's prebends. One of them was especially profitable; to be specific, it was taxed at 125 camera florins. In Capranica's judgment, which Nicolaus of course knew, Wunandus could no longer hold ecclesiastical benefices in the future; the ones he had held thus became free, including the richly endowed prebend just named. Only four days after the pardon for his client, the clever minor penitentiary had Wunandus's prebends in the diocese of Modena reserved for himself by the pope.

But how did the penitentiary resolve the problem of whether Wunandus should remain in his marriage or in the priestly estate? Here Cardinal Capranica did not hesitate to ascribe priority to the sacrament received first by determining in conformity with a decretal of Innocent III (X 3.31.19) that Wunandus had to return to his wife. In order to live up to his vow at the same time, the major penitentiary suggested to the petitioner that he should—as canon law indeed permitted—persuade his wife to enter an order; then he could remain a priest. Until he received a valid dispensation from the curia, the *littera* of the penitentiary says, he was suspended from service at the altar. The decision that a valid marriage prohibited the reception

119. RG 6.4368.

of higher ecclesiastical consecration corresponded with canon law, and almost all of the penitentiary's decisions pertaining to such cases followed this principle. Wunandus had had himself ordained in a way contrary to canonical prescriptions, and thus his ordinations were invalid. If his wife were to join an order, then he could have himself ordained again.

Difficult decisions about the worthiness of a marriage over and against higher orders, as in the case of Wunandus, were set before the penitentiary almost daily. One has to subject to a careful analysis the supplications in which clerics with higher orders appear, in order to elicit their backgrounds. Especially telling are the supplications submitted by women, such as the supplication registered in 1482 by Irniga Schonecken from the archbishopric of Trier.¹²⁰ With the help of her experienced proctor, she presented a well-crafted formulation of the reasons for her path to the Roman well of grace. Irniga was firmly convinced that she had contracted a *matrimonium per verba de futuro* with a certain Johannes Utgin, a cleric in Trier, a man who had received lower orders or at least the tonsure, and that she had made the marriage legally binding at a later time by sleeping with him. Canonically it was clear that an engagement became a valid marriage when the couple slept together. This doctrine was uncontroversial in the decretalist jurisprudence and was based on a decision of Pope Alexander III (X 4.1.15), who had explained that *sponsalia de futuro* became a rightful marriage through the *copula carnalis*. The engagement, however, had to be demonstrable and public.

The question was whether Irniga could prove the marital pledge at court. Had Johannes only promised marriage in order to be able to go to bed with her? There were grounds for the suspicion, as the further course of her story showed. After all, a short time after the events Irniga recounted, Johannes had himself consecrated a subdeacon at the curia, which she found out only through hearsay. Unfortunately, proof for this consecration in Rome is also lacking—there is no corresponding entry in the *Libri formatarum*. Irniga persisted in her opinion, however, that she had contracted a proper

120. RPG 6.3755.

marriage with him and wanted “to remain in this marriage for the sake of her status, her honor, and her spiritual welfare.” The proctor would have explained to her that the obligation of a celibate life necessarily went along with consecration as a subdeacon. But she would also have known that a lawfully contracted marriage presented an impediment to consecration and that the married could not readily receive higher orders. For this reason, she made a supplication to Pope Sixtus IV, having received very good legal advice. She knew that Johannes would advance the excuse that as a subdeacon he could not be forced to the *sollemnisatio* of the marriage with Irniga, and he could not even live together with her after a ceremonial wedding in a church. She asked for the papal decision in favor of the priority of the, in her opinion, legitimate marriage. “With every legal means available,” Irniga’s supplication said, “Johannes should be compelled to take up the ceremonial celebration (*sollemnisatio*) as was the custom of the land and to live the married life together with her.” She asked the pope to strike up a declaratory decision corresponding to her wish.

In the request for a *littera declaratoria*, the penitentiary acted according to proven models. In Irniga’s case, after the auditor checked to make sure the request for pardon was canonically permissible, the already mentioned Giovanni de Ceretanis, bishop of Nocera and doctor of both laws, entrusted the local bishop to make an investigation of the case, to summon the necessary witnesses, and then, if the petitioner’s claims made in the supplication corresponded to the truth, to allow the request as it was specified in the signature. How the decision panned out in Trier escapes our knowledge, because of the lack of sources of the officialate court there. Perhaps the solution of entering a cloister was also made palatable to Irniga.

The supplication of Wilhelm von Fingern contains what began as a touching love story between a cleric and a young maiden.¹²¹ He described himself as *magister in artibus*, came from the Baltic bishopric of Włocławek (Leslau), and was a cleric, but he had not yet received higher orders. Having fallen head-over-heels in love (*amore*

121. RPG 7.2606 (year 1490).

captus) with a certain Margareta, Wilhelm wooed the lady fervidly. But then he fell into competition with a rival in the person of a smart young priest. Wilhelm tried everything to lead Margareta away from his competition, and, in the end, she showed herself inclined to give preference to him. She insisted, however, that Wilhelm at least had to promise to marry her before she would sleep with him. As an educated cleric, he made the suggestion of giving her a handwritten pledge of marriage. Previously he had consulted with another ecclesiastic how he should proceed. The colleague, apparently experienced in this field, answered him that he could write what he wanted, so long as he did not really have the intention of contracting a marriage. His adviser expressly referred to the decretal *Tua nos* from the fourth book of the *Liber Extra* (X 4.1.26), in which Pope Innocent III had made the will to marry the prerequisite for the validity of a *matrimonium*. Assured in this way, Wilhelm wrote in his own hand the following lines to his Margareta: "I, Wilhelm, etc., confess by this letter that I take you, Margareta, to be my wife." Wilhelm had certainly not calculated the consequences of this note, for, with this piece of paper in hand, Margareta went straightway to the ecclesiastical court and claimed him as her husband. Wilhelm fought back, intentionally avoided sleeping with her again, for that would have made the marriage valid, and explained before witnesses that he had written the lines "only out of blind love." To make a long story short, since he preferred the clerical career to his Margareta, he asked the pope for a *littera declaratoria* that would kindly confirm for him that he was not bound to Margareta in a marital union. In the signature, the penitentiary deemed that the Cistercian abbot of Pelplin south of Gdańsk in the diocese of Włocławek was to take up the matter and would have to decide "whether the intent to marry expressed in the letter had died out."

The Problem of Concubines

When Wilhelm approached his Margarete *fornicarie*, he did sin, but he did not violate the command for celibacy, for he did not possess higher orders. As a simple cleric he would easily have been able

to marry his admirer. Like most young men in the late medieval empire who were not clerics and knew nothing of canon law, he was aware that going to bed with a woman did not mean he had to marry her afterwards, even if beforehand he was effusive and promised to marry his love. Clerics from subdeacons on up were barred from a valid marriage; if they had intercourse with women, they sinned, and they usually committed adultery or incest too if it was a matter of married women or members of their parishes. Even priests were human, however, and the “weakness of the flesh,” as the supplications say in making excuses with biblical language, occasionally overcame them. In spite of the canonical prohibition of concubinage, many ecclesiastics holding higher orders lived constantly and not just on occasion with women. They kept concubines—not only single women but also married—and had children by them. Provincial synods repeatedly threatened wayward clerics with suspension from office, the loss of their benefices, excommunication, and additional ecclesiastical punishments. But just the fact that as many as half of all the supplications registered in Rome with the request for the release from the *defectus natalium*, the blemish of an illegitimate birth, came from illegitimate persons whose fathers were clerics obligated to celibacy, reveals the true extent of concubinage in the late Middle Ages. Such uncanonical living arrangements were widespread not only among clerics but also in the same measure among the lay nobility. Concubines of ecclesiastics show up rarely in the supplications of the penitentiary; they interest us here only from the perspective of marriage law.

Johannes Mathie de Gambino, a subdeacon from the bishopric of Posen, had to present his story to the penitentiary.¹²² When he intended to be consecrated a subdeacon, his concubine of many years, Elizabeth, who already had a child with him, protested. She is called a *mulier corrupta* in the text. She demanded to be recognized as Johannes’s wife before the episcopal official and desired to have their offspring legitimized. Johannes did not want to marry Elizabeth under any circumstances, but nevertheless promised her under oath

122. RPG 6.3455 (c. 1470–71).

“not to leave her until he died,” in other words, to continue in the relationship of concubinage against the canonical prohibition. With Elizabeth’s express approval, he then had himself consecrated a subdeacon and, according to the stipulations of the canons, could now receive benefices with care of souls. Promising everlasting faithfulness to his Elizabeth cost him nothing, but to hold onto this in reality soon proved to be difficult if not impossible. His relationship with her was notorious; everyone in the surrounding region knew about it. The bishop of Posen therefore had Johannes straightened out; Johannes had to send his concubine away with all possible speed. As in countless comparable cases, the matter was in the first place about adhering to the statutes issued by the general and provincial councils. What would happen to Elizabeth (and her child) was as a rule not the primary concern of the ecclesiastical courts.

Johannes did, however, concern himself with Elizabeth’s future and that of their child. It pained him to have to leave his long-term concubine, but the punishments that awaited him, especially the threat of imprisonment, made him fearful and caused him to ponder a way out. He called up four witnesses, whom he had bribed beforehand, before the bishop of Posen’s official to speak on his behalf. One of them testified that Johannes had contracted marriage *per verba de praesenti* with Elizabeth before he was consecrated a subdeacon. The other three swore that he had promised to marry her, lived with her, and had a child with her, all of which was true. Thus, at the very least, Elizabeth’s honor was saved. Johannes nevertheless did not give up on his intention to be ordained a priest. For this reason he asked the penitentiary for a *littera declaratoria* that he had not incurred any disqualification or irregularity but that he could also be active in the care of souls in the future. In this way he hoped not to have to give up his prebend. The regent of the penitentiary had, as usual, referred the supplication back to the bishop of Posen with the typical condition that a hearing should also be given to Elizabeth. What became of this hearing escapes our knowledge. Much in Johannes’s story thus remains unclear, and one thing above all: if a valid marriage with Elizabeth was confirmed before the court, how could Johannes then receive ordination?

What Johannes Steup, priest of the bishopric of Eichstätt, reported about his turbulent past in his supplication registered in 1476 does not come off as any less dramatic than the story from Posen.¹²³ At the time of his request to Pope Sixtus IV, he had already been ordained a priest. When Johannes was still a layman, Anna Creuselin had brought charges against him before the episcopal court. We may assume that the two had had sexual intercourse; otherwise a process would have been entirely hopeless from the start. It is very probable that Johannes, during his wooing, had promised to take Anna as his wife. But the pledges made in private just between the two of them were not easy to prove before the court. Anna nevertheless claimed, incorrectly, as Johannes wrote, that her lover had pledged to marry her. The official of Eichstätt investigated the case, summoning witnesses who, according to the view of the defendant, were suspect, for they consisted (as always in the words of Johannes) “of persons from Anna’s close relatives.” The judgment went in favor of Anna; in a definitive decision, the official declared her claims to be well founded and determined that a valid bond of marriage stood between the two. Johannes viewed this decision against him as “unfair and invalid” and took legal action against it by submitting an appeal to the appropriate archiepiscopal court of Mainz. For all that, a formal appeal process was not initiated because Johannes “did not feel obligated to Anna in his conscience” and did not take the process further “because of a lack of money.” It is also conceivable, however, that he had no prospect for an outcome favorable to him from the process before the appeals court of Mainz.

In order to escape the possible hounding of Anna and her relatives, Johannes decided to go to the university. The matriculation lists of southern German institutions of higher education unfortunately do not contain his name, so the university he attended cannot be identified. A university course of studies provided the best qualifications for a clerical career, for graduates possessed advantages for the “prebend market” over less qualified applicants. The supplication does not indicate how long Johannes lingered at the university,

123. RPG 6.3598.

what subjects he studied, or whether he sat for his examinations. In the meantime, Anna gave up hope of having Johannes as her husband and married another man. For his part, Johannes had himself ordained a priest. After several years, Anna's husband died, and she wedded a second time. Unexpectedly, new difficulties now arose for Johannes from his former girlfriend, for Anna's second marriage seems not to have gone well, and she thus came back to the court judgment once issued in her favor.

Evidently "in order to get rid of her second husband," Anna appeared anew before the official court of Eichstätt. She proposed to have Johannes identified as her husband, with whom a valid marriage had once been confirmed by the court but never realized. Anna also received a judgment in her favor in this process. Not only this, but the bishop also had Johannes, who seems to have possessed a curated benefice in the bishopric of Eichstätt, summoned, carried out an investigatory process, and suspended him from performing his spiritual office until he consulted the apostolic see on this matter and had obtained the pope's judgment. Johannes was thus referred by the bishop of Eichstätt to the Roman curia. In his request to the Holy Father, Johannes declared that he possessed a pure conscience and that he had neither entered into a marriage with Anna nor ever had the intention of marrying her. He asked for a formal *littera declaratoria* that would confirm for him that he was not bound to Anna by any marital bond but that he could instead practice his priestly office.

As was common in such requests, after consultation with the auditor, in this case Franciscus de Padua, the penitentiary referred the entire dossier back to the bishop of Eichstätt. He was instructed to summon Anna and other witnesses. In case it turned out from the investigation that Johannes had not given his assent to a marriage "either through word and deed or in another way," then his request could be granted. But since Johannes had already lost twice in Eichstätt in this matter at court, it could hardly be expected that a decision in his favor would come about in a third process. As eager as the reader might be for the end of Anna and Johannes's story, it remains in the dark because of the lack of local sources.

Scandal in Freising

All of the stories recorded in the supplication register of the penitentiary, it must be repeated, come not from a poet's fantasy but from real life. Even for the reader for whom the relevant products of Italian Renaissance poetry from Boccaccio to Sacchetti's *Trecento Novelle*, Poggio Bracciolini's *Liber facetiarum*, and Masuccio Salernitano's *Novellino* are not entirely foreign, they might sound somewhat surprising. The figures who appear in the supplications sometimes seem to have originated in a novella—not least, the protagonists of the following story. The Freising cathedral canon Markus Hornle and his sporadic lover, Margarete Schlier, were *dramatis personae*. At the beginning of the 1480s, she worked as a servant in the house of Johannes Scheffler, a citizen of the episcopal city.¹²⁴

Markus Hornle was a priest and possessed the office and prebend of a canon in Freising. He was bound to Margarete by an intimate relationship extending over a long period of time. Then his lover became pregnant; soon he would become a father. Prior to the delivery, Markus found out that Margarete intended “to hand the child over to the canon in his church, in the cathedral, in full public view, in order to make a fool of him.”¹²⁵ With a spectacular action of that kind, the woman demonstrated a due portion of courage and certain help from without. Without the support of Margarete's friends and relatives, her bold plan most certainly could not have been carried out. How did Markus Hornle react to this advertised showdown? In his supplication, from which we take all of our information, he pursued the typical path of defamation. He first denied being the father of the child at all. He did not deny having had a relationship with Margarete, probably because the whole city knew about it, but in this way he accused her of having given herself to other men as well and thus undermined her reputation. The whole story, he further argued, was an invention of a personal enemy who wanted to attribute the child falsely to him. In order to “counter her malice and avoid a scandal,

124. All of the following facts come from RPG 6.3746.

125. Ibid.: “puerum dandi et assignandi dicto exponenti illumque publice deferendi et dimittendi in ecclesia Frisingensi . . . in verecundiam exponentis.”

he had a secular judge forbid Margarete from carrying out such a scandalous action." At the same time, he commissioned a notary to pay out two Rhenish florins to Margarete in front of witnesses "out of sympathy," which Margarete also accepted. The payment was not, however, the *Kranzgeld* that confirmed paternity but rather was paid to keep her quiet in the expressly stated expectation that Margarete would "not undertake anything against Markus's honor and reputation." As we will see in the comparison with the compensations typical in other dioceses, Markus proved himself to be rather stingy.

In the meantime, Margarete brought a little boy into the world, who was baptized with the name of Andreas. After his birth, regardless of the secular judge's order not to cause a scandal, she repeated her proclamation that she would lay the boy at the feet of the father in full public view in the Freising cathedral. Members in the circle of the cathedral chapter believed Margarete capable of such an action and advised their fellow canon to act with somewhat greater caution. As a result, Markus had Margarete summoned before the officialate court of Freising, allegedly to clarify legally whether "the boy was his." How might a spiritual court have examined the issue of paternity in an age before the existence of DNA analysis? Whatever the case, the court summoned Margarete on the Friday before the Feast of St. Catherine. People celebrated the feast day in Freising on November 25 and on July 5, 1481, the day of the saint's translation. Margarete did not show up at the appointed time, making herself guilty of contumacy. Just to be sure, the court served her a second warning, with apparently the same lack of reaction on the part of the accused.

A few days later, the entire cathedral chapter in Freising ceremonially observed the Feast of St. Catherine. Bishop Sixtus von Tannberg (1473–95), his cathedral chapter, and the ecclesiastics of other churches in Freising were gathered for High Mass in the cathedral. Markus Hornle's seat in the choir stalls, however, remained empty; he seems to have perceived that Margarete would execute her intended plan despite his threats and all his attempts to inhibit her from doing so. In fact, the young mother showed up with little Andreas in her arms in the cathedral and, under the eyes of the gath-

ered clergy of Freising, went to the place where canon Markus was accustomed to sit. She laid her child down there and then left the church once more. This spectacle at the expense of his canon would not have pleased Bishop Sixtus von Tannberg, who was very intent on reform and a blameless life among his clerics.¹²⁶ Or might we suppose that someone had secretly encouraged Margarete to perform this dramatic act in order to make an example of this canon who had broken the rules of the *vita clericalis*?

Helpful hands picked the boy up from the choir stalls and handed him over to a wet nurse. The child died the following night, which Hornle also mentioned in his supplication. The question remains why the canon turned to the pope at all. Even his confessor in Freising could have absolved him from a violation of celibacy. Even though, as he claimed, he had tried with all his might to avoid a scandal and deeply regretted the death of the child, he feared that his personal opponents and enemies would charge him with at least partial culpability in the child's death, and he would be deemed irregular for service at the altar and a prebend would be deemed unsuitable. He thus requested that the penitentiary confirm for him that he was guiltless in the death of the child and also could keep his status as a canon in the future and serve as a priest at the altar. As usual, the bishop had to decide on the matter. The supplication was handed over to him with the understanding that he would issue the desired authorization to Markus if Markus's claims were confirmed in a local process. The narration of his supplication had become so detailed for this reason, namely, that in Freising many of his ecclesiastical peers still remembered the unheard-of proceedings of the past St. Catherine's Day. The courageous Margarete would have pursued further her service in Johannes Scheffler's household in Freising. The process seems to have produced no negative consequences for the cathedral canon Markus Hornle. The local narrative sources took no notice of the result.¹²⁷ He held office and position in Freising;

126. On Bishop Sixtus, see Josef Maß, *Das Bistum Freising im Mittelalter* (Munich, 1986), cf. 328–31.

127. There is no mention of the outcome in Veit Arnpeck and in the German episcopal chronicle. The work of H.-J. Busley, *Geschichte des Freisinger Domkapitels* (Ph.D. Diss., Munich, 1956) was not available to me.

for the year 1495, the chronicler Veit Arnpeck mentions a Markus Hörndl, who in the meantime had obtained the licentiate in both laws and moreover was in possession of his canonical status in Freising and was provost of St. Andreas Church.¹²⁸

The happenings in Freising should not give the impression that scandals of this kind were the order of the day in cathedral churches. In many dioceses, however, reform-minded prelates combated with varying amounts of success the cancer of concubinage and acts of sexual waywardness among their clerics. Ecclesiastics as well as secular courts as a rule proceeded strongly against men who seduced women and girls in an irresponsible manner, whether they were laymen or ecclesiastics, and at least sought to keep material damages in check. Before 1494 in the bishopric of Passau, a cleric with lower orders by the name of Georg Zierberger deflowered a girl. The deacon of the cathedral chapter, to whom the evil-doer was subject canonically, dragged him before the court and condemned Georg "to pay the girl within a set timeframe a certain sum of money as a marriage portion, as it were." Unfortunately the amount is not mentioned. The judge certainly meant that the girl whose honor had been removed in this way might, with the money, still perhaps find a husband. The accused did not challenge the judgment, and it therefore gained the force of law. Georg was held accountable for the payment, but he let the deadline pass. Since he had not paid, the deacon promptly excommunicated him and even publicly announced the punishment. With his reputation justifiably ruined in this way, he fled from the bishopric, went to Rome, and was ordained a priest there. The documentation is missing in this case in the Roman register of ordinations. When he returned to his prebend, the bishop suspended him from altar service, which he would in any case not have been able to carry out as a person found under excommunication. In order not to lose his *beneficium* as well, Georg Zierberger's only option was the path to the Roman well of grace. In his supplication he claimed to have paid the girl the money and beseeched the pope to remove the punishment that had been imposed on him in Passau so that he could serve at the altar again. The regent of the penitentiary

128. Veit Arnpeck, *Liber de gestis*.

did indeed make the signature with *fiat de speciali*, but he added the condition “as long as Georg had previously paid and was absolved by the bishop of Passau.”¹²⁹

How Husbands Took Revenge

For many ecclesiastics, the obligation to be celibate did not keep them from going after married women and seeking sexual relations with them. While ecclesiastical synods and provincial councils sought to enforce the observance of celibacy through laws and the threat of the loss of benefices, laymen defended themselves with other concrete means against clerics who went after their wives and daughters. Fathers and husbands knew how to protect the honor of the women entrusted to them in palpable and completely effective ways. Friedrich Gasser from Salzburg along with several companions, for example, had caught a priest in a tryst with a married woman. He and his companions knew how to capitalize, in the truest sense of the word, on this situation by extorting the not insignificant sum of thirty-two florins from the ecclesiastic caught in the act.¹³⁰

Laymen also did not shy away from more extreme methods, methods that removed for all time the danger of sexual pursuits. In the late Middle Ages, this technique was used everywhere, but especially frequently in Mediterranean regions, as the following stories from the Spanish diocese of Burgos brings to view. The priest Johannes Garsias del Olmo reported the following in his supplication from the year 1498.¹³¹ He lived under the same roof with his brother, Alfonso. One time Alfonso’s wife, enraged, told Johannes that a priest by the name of Alfonso Vallejo wanted to commit adultery with her and had approached her to sleep with him. In order to “restore the honor of his house,” the supplicant said, “and to avert adultery,” perhaps because the wife was thought to be capable of giving in, he laid out the prickly business to his brother. The brother conferred with his wife and set up a nice little ambush. They decid-

129. ASV PA 43 fols. 215v–216r: March 22, 1494.

130. RPG 3.110 (year 1455).

131. ASV PA 46 fol. 302r–302v.

ed to have a message delivered to the priest that his admired would wait for him on a certain night. In any case, that is what the priest brother of the husband claimed. He had been involved in the whole affair, which then had bad consequences for him.

In fact, it just so happened that, at the appointed date, the priest snuck into the woman's house, but instead of finding the desired bedmate, he found a group of men who without hesitation immediately cut off his testicles, a not uncommon revenge on clerics who pursued women in Spain and also elsewhere in Christendom. Afterwards the avengers wanted to throw the now mutilated man out of the window with hands and feet bound, which the priest brother tried to prevent. It is amazing that the castrated ecclesiastic survived, as the supplicant further reported. Since the priest who took part in the act of revenge was automatically excommunicated, he turned to the pope in order to avoid losing his office and benefice. He reported everything that happened and received dispensation from the penitentiary to continue his clerical activity.

The practice of castrating clerics who broke their vows was used not only in Spain but also in northern regions. Several men, Johannes Otorich from Grellingen, Johannes Tanner from Menzlingen, and Ludwig, called Appenzeller, had met in 1466 in Basel and "during the hours of the night robbed a priest of his genitalia." One may well assume that a preceding sexual offense on the part of the impaired priest is also hidden behind this act of revenge, although the three men do not speak of it in their supplication. This motive is similarly not named in the case of Peter Schob, who also came from the bishopric of Basel and who "had cut off the genitals" of a priest in 1467.¹³² In the case of Balthasar Bosse, a noble layman from the bishopric of Merseburg, it was not the honor of his wife or daughter that he intended to restore by castrating a priest but rather that of his sister, with whom the cleric had slept. The supplication with the request for absolution stressed that the castrated priest survived the operation and "was fully healed again." Balthasar travelled to the curia in Rome in 1477 for the express purpose of receiving papal ab-

132. The Basel cases are in RPG 5.1398 and 1230.

solution. That might have been the reason why the same man had already made an effort to reach the papal well of grace three years before for absolution from the identical offense, after he had similarly “cut off a priest’s genitalia and castrated him.”¹³³

Finally, one other document shows that the practice of castration by late medieval “surgeons” could have even fatal results. Four men from Eichstätt and other dioceses, Georg von Biswans, Wilhelm Jeger, Ulrich von Hapsberg, and Michael Vyol, were involved in a controversy between the bishop, cathedral chapter and clergy of Augsburg, and the imperial city, in the course of which the four men had castrated a priest. The priest did not survive. Even for this deed, no motive is given in the supplication. Since the named men also had to be absolved of additional violent attacks against Augsburg clerics and church property, one cannot say with certainty whether a sexual offense of the castrated had served as the occasion for the deed in this case too.¹³⁴

When Nuns Got Hitched

In families of the high nobility, because of the large dowry which had to appear opulent in consideration of the prestige suitable to one’s social standing, marrying off a daughter could become very expensive, even bringing the family to the brink of ruin. In the circles of the southwest German nobility, the sums that flowed into a dowry befitting one’s social class reached up to 30,000 florins. If there were only girls in a noble family, marrying off all the daughters had to end in financial catastrophe. Since the early Middle Ages, however, the nobility had found a proven means against such an eventuality: daughters who were too expensive to marry off or for whom the parents did not find an acceptable bridegroom were put in a cloister. There the entrance fee or life annuity, along with a simultaneous renunciation of any inheritance, was only a tenth to a hundredth of the sum to be raised for a dowry. Karl-Heinz Spiess estimates that up to thirty-five percent of daughters from noble families in the late

133. RPG 6.2405 (year 1474) and 6.2734.

134. RPG 6.3048 (year 1480): “genitalia seu virilia amputarunt.”

medieval German empire were placed in a convent.¹³⁵ The problem of financing an expensive dowry could be discarded with an essentially low entrance fee for a monastery that in many cases was reserved only for nobility, where the daughters lived in accord with their station in life and obtained in part a noteworthy education. After the novitiate, a probationary period of at least one year, the girls took the vow of life-long chastity, the "profession," and were thereby prohibited from ever contracting a canonically unobjectionable marriage. The profession was for that reason very important for the families, for it carried with it the settlement of the daughter's claims and thus the renunciation of any inheritance. After 1298, leaving a monastery or convent was, moreover, punished with excommunication in canon law; the relevant decretal, *Periculoso*, by Pope Boniface VIII made its way into the *Liber Sextus* (VI 3.16.1). At the same time, enclosure was consequently introduced for female monasteries and convents. If a nun ran away from the community without her superior's permission, she committed apostasy and was automatically excommunicated. If a nun dared to leave her monastery without permission to marry after making her profession, she made herself as the bride of Christ guilty of bigamy and made her husband similarly guilty of three offenses: sacrilege, adultery, and incest. A decretal of Pope Innocent IV from the year 1244 (VI 3.14.2) prescribed a minimum age of fourteen for a valid profession, which Martin V later confirmed. Corresponding decisions of the *Liber Extra* set in place the one-year probation prior to the profession (X 3.31.14 and 3.31.23).

Could a nun nevertheless dare to leave the monastery or the convent shut off from the world by enclosure? Could she then ever marry? Oftentimes, having been under the protection of pious sisters since early childhood, such a woman had also received a good measure of education, at least having learned how to read and write. The earlier a girl had been integrated into the life of the cloister, the easier, one could think, she would take to the life behind the walls of the monastery. Therefore, many girls were handed over to nuns

135. Karl-Heinz Spiess, *Familie und Verwandtschaft im deutschen Hochadel des Spätmittelalters: 13. bis Anfang des 16. Jahrhunderts* (Vierteljahrsschrift für Sozial- und Wirtschaftsgeschichte 111; Stuttgart, 1993), 364–70.

as young children in order to be raised by them,¹³⁶ such as Anna Flachsland of the knightly class. She was only four years old when she was placed along with a relative in the monastery of Klingenthal before the gates of Basel in 1496.¹³⁷ She came from a family of Upper Alsace, a family that possessed rights of citizenship in Basel and numbered among the local knightly class. An uncle of Anna was Pius II's chamberlain and provost of the cathedral in Basel until his death on September 11, 1481. At the age of four, Anna was not able to make her own will manifest and to protest being installed in the monastery. The cloister walls were not yet insurmountable; only the ceremonial vow of the profession formed irreversible ties. Entrance into a monastery and profession, just like marriage, required an act of one's own free will as an unconditional prerequisite for their validity. Georgine Cruseler was also given at her parents' bidding to nuns at the tender age of four, this time to the convent of Augustinians of Marienthal in the diocese of Cologne. A relative already lived there as a nun; Georgine stayed with her for ten years.¹³⁸ She repeatedly expressed that she had no inclination for cloistered life, but at age fourteen she nevertheless made her profession under pressure from her parents. This happened in such a way that she recited several words written on a piece of paper for her whose meaning she would not have grasped. Being of the opinion that she had not made a profession, she soon afterwards took off her habit and left the convent in order to marry a certain Johannes de Scheylberg publicly. In order to counter objections of the order to her marriage, she made a supplication for a declaration of the penitentiary that her union with Johannes did not controvert anything and that their children were legitimate. In the usual way and under the condition that the archbishop of Cologne found confirmed that Georgine had not made a valid profession, the regent sought to give the pope's blessing to her request.

If a daughter was placed in a monastery by her parents and forced

136. An example in the fifteenth century is the Cistercian Abbey of the Holy Cross in Braunschweig; cf. Eva Schlottheuber, *Klostereintritt und Bildung* (Tübingen, 2004).

137. ASV PA 46 fol. 173v.

138. RPG 7.2471.

against her will to make a profession, the profession was invalid, as seen in the example of Georgine. According to a single, already repeatedly cited title in decretal law, all behavior in the ecclesiastical realm that had been compelled through force and fear (*vis et metus*) was null and void.¹³⁹ In the countries where there was written law, this norm of Roman law was known long before the rediscovery of the Digest. Pope Alexander III had already applied this principle specific to marriage to a forced entrance into a monastery. The ceremonial profession, however, also dissolved a marriage that had not yet been consummated, as Innocent III had already decided and as could be read in the *Liber Extra* (X 4.15.6). The legal rules set out here enjoyed widespread familiarity, and they could lead to a decision of dramatic consequence for one's life. The penitentiary register contains numerous supplications in which young girls recorded their fate. In almost every case, the main individuals in the following stories were vindicated by the penitentiary and could leave their convent and get married, since they were defending themselves against a fate of cloistered life that had been forcibly thrust upon them. For this phenomenon of forced entrance into a monastery, the Italian language uses the suitable expression "*monacazione forzata*" (forced "nunnization").

Bruno Brindrich, resident of the bishopric of Constance, and his wife had given their daughter Agnes to the Augustinian convent of Petershausen near Constance against her will. She was unable to do anything against her parents' pressure ("terror," as she put it) and was forced to don the order's dress.¹⁴⁰ The Augustinian convent of Petershausen was reckoned "liberal"—the nuns could leave the cloister and take part in the life of the city of Constance, from whose citizens most of the nuns came. It is little wonder, then, that Agnes utilized this freedom and, before her probationary year expired, contracted a marriage *per verba de praesenti* in the presence of several witnesses. At this point, however, the marriage was not yet consummated and thus not indissoluble. The parents seemed to have had

139. X 1.40.1–9. See the fundamental treatment in Kuttner, *Kanonistische Schuldlehre*, 299–333.

140. RPG 4.1839 (year 1464).

no idea that their daughter had taken this step. Only when Agnes wanted to celebrate the *sollemnisatio*, which normally preceded entering the house of the bridegroom and the *consumatio*, did they step in. They shut their daughter up in their house for several months. Agnes had to give in this time as well. After renewed threats from her parents, she finally found herself prepared to assure a spiritual judge that she would return once more to the monastery and not to her husband. With great pomp, *cum magna festiveria*, as the text of the supplication says, the victorious parents led Agnes to the monastery again and managed to have her prematurely make a profession in their presence, even though she had still not spent a full year with the Augustinian nuns. Agnes emphasized, however, that she had done this only “out of fear and anxiety,” as the text of the supplication stresses, and, additionally, that she had done it before a secular cleric and not before a member of the Augustinian order, which added another formal error. Agnes did not suppress her reservations and protestations but repeatedly swore to her fellow sisters that she did not intend to remain in Petershausen but that, as soon as her father died, she would return again to her husband in marriage. She refused to take part in the daily prayers and the work of the other women in the cloister.

After her father’s death, she carried out her threat. She could not have acted alone in the legal steps that now followed, but only with the support of her husband or a proctor trained in canon law, who was certainly also involved in the written composition of the competently argued supplication. There was surely no shortage of experts in the episcopal city. Agnes or her adviser had her case taken before the vicar general of the bishop of Constance, who also administered the officialate court in charge of marital matters. Unfortunately we do not know the precise decision of this ecclesiastical court. The officialate court could not avoid, however, a judgment that Agnes be permitted to leave Petershausen. Only then did Agnes give up the habit and leave the monastery. In order to be completely sure of the matter, she took care that the supplication, from which we know all the details of her case, reached Rome and ended in a *littera declaratoria*. The *littera* charged the bishop of Constance with investigating the

case anew and coming to a decision in line with canon law. In light of the legal situation, if it in fact was as the supplication claimed, there is no doubt of a positive outcome for the petitioner. The monastic life had come to a close for Agnes; married life could begin.

The intervention of the penitentiary in a forced entry into a monastery was not always crowned with success; there was still then the way via the papal chancery. A couple from Cologne, Gottfried and Yda, had to take this way. They had united themselves in marriage in full secrecy against the will of her parents. When the union between Gottfried and Yda became known, Yda's father and step-mother intervened. They engaged in a plot with the abbess of the convent of Poor Clares in Wamell (diocese of Cologne). They promised the nuns a portion of Yda's assets as an entrance fee and transferred the woman against her will "at night in the fog" to the monastery. In any case, that is what the supplication registered in Rome on January 1, 1465 says.¹⁴¹ Despite all of her protests, Yda had to make a profession after the probationary year. Since she constantly swore to return to her husband at the first opportunity, she was "held like a prisoner under close watch." In the end she managed to break out. She "flew back to her husband," as the text of the supplication poetically puts it, and the two lived together for several years, apparently undisturbed, and had children. The supplication was supposed to lead to a papal declaration that confirmed that Yda was not obligated to the Poor Clares and that she could remain in her marriage. In principle the major penitentiary agreed, but he referred the case, as was routine, to the archbishop of Cologne. The archbishop was to check first whether the contraction of the marriage and the *copula carnalis* had occurred prior to the entrance into the monastery and the profession. Everything seemed so far to develop according to Yda's and Gottfried's wishes.

The investigation before the officialate court of Cologne did not go as the couple had hoped, as further documents in the papal secret archives show. From a supplication registered in the chancery on June 6, 1466, we find out other details of the drama besides the facts

141. RPG 5.1949.

already known from the document of the penitentiary.¹⁴² They have to do with Yda's mother's inheritance. One night Yda's father had her kidnapped and brought again to the Poor Clares without the consent of Gottfried. When her husband found out, he went to the monastery with several friends and demanded that Yda be handed over to him. The abbess refused. Yda was held in the monastery under close watch for six years, and she was forbidden any contact with the outside world. One night, however, she managed to escape the monastery and flee to her husband. But her parents had her brought back again to the monastery, where she was locked up in a room and held under close watch. Gottfried and several of his friends then broke down the doors of the house with force, freed Yda, and brought her home. In his supplication, the husband stressed that he was not sorry for his action; despite the sacrilege committed, he placed his hope in the understanding of the pope, to whom he submitted himself as an obedient son of the church. The couple had failed to mention these details a half year earlier in their supplication submitted to the penitentiary. It is for this reason that the official evidently had not confirmed the pardon for continuing in their marriage, which in principle was to be approved by the major penitentiary. Now, one-and-a-half years after the first supplication, Gottfried asked to refer their case to judicious men in Cologne. These men were to look into everything one more time and, if his report should turn out to be true, were to absolve him and his wife and impose a penance on them.

Apparently this supplication likewise did not have success in Cologne, for, under October 3, 1467, one finds in the supplication register another request for pardon submitted by Gottfried.¹⁴³ The entire story is reported again, albeit more briefly. Up to this point, the fact was not mentioned that the abbess of the Poor Clares was Yda's step-mother's physical sister. Gottfried expressly stressed in his third supplication that he had not caused any further damage to the convent and, in contrast with his second supplication, felt regret about his at-

142. RG 9.1690; to begin with here is the supplication in ASV Reg. Supp. 596 fols. 65v–66v.

143. ASV Reg. Suppl. 615 fols. 95r–96r.

tacks (*excessus*). He asked again to have his case investigated by “rational men,” this time however from outside of the city and diocese of Cologne. Evidently there was no chance of him getting justice in the diocese of Cologne. This explains why back in the second supplication Gottfried did not have any bull issued. The judges delegate were supposed to absolve him and his wife and impose penance on them under derogation of all opposing canons. The papal referendary Petrus Ferriz, bishop of Tarazona, signed the request with the clause *concessum in praesentia prout de iure*. The resulting bull issued by Paul II is to be found in the Vatican register.¹⁴⁴ It shows that this time the pope had complied with Gottfried’s wish and had handed the matter over to the deacons of St. John and St. Peter in Utrecht as well as to the canon of the cathedral church there, Otto von Tyl, and not to Cologne, where Gottfried’s request had failed twice (formula: *Sedes apostolica pia mater recurrentibus*). The bull puts forwards all the details of the drama again. At the end it is mentioned that Gottfried and Yda lived together in a legitimate marriage. The pope instructed the judges delegate to declare their marriage as legitimate and their children as born in a lawful marriage against all contrary claims. In addition they were to absolve Gottfried from excommunication. Since he refused to come to Cologne for reparations and public penance, the judges delegate were to guarantee these things to the abbess and the convent and impose on him a suitable penance. No further appeal could be made. Only now could Gottfried and Yda live undisturbed with each other.

Supplications that deal with *monacazione forzata* do not always report dramatic stories of the kind just told. “Normal cases” of problematic professions or an entrance into a monastery carried out under force could be solved without a problem through papal dispensation without additional legal processes, especially since Rome appears to have assumed a rather liberal attitude towards the widespread practice of putting someone in a monastery. Monasteries and convents, however, let their members go only with reluctance, especially if a substantial fortune had been brought in that could be lost

144. ASV Reg. Vat. 527 (the chancery’s register of papal bulls) fols. 165v–166v, from October 3, 1467.

again in part if the member responsible for it departed. If the monastic community was not a papally recognized order, leaving the community and getting married later was unproblematic. This was so in the case of Alheydis Wynandi from the bishopric of Utrecht, who before 1472 was forced by her mother to enter a house of Beguines where women lived according to the Rule of the Third Order of St. Francis.¹⁴⁵ The legal situation in the Third Order favored members of the order who wished to depart, until the mentioned constitution of Pope Sixtus IV, which made it more difficult to do so.

Katherina from the family of the Truchsessen of Pommersfelden in the bishopric of Bamberg similarly had a *monacazione forzata* behind her. Two supplications registered in March 1477 and January 1478 contain the story of her life of suffering.¹⁴⁶ As a young girl she had lost her father, and, at the age of seven, she was brought to the Frankish Augustinian convent of Frauenaaurach (which stood under the leadership of Dominicans) by a relative who had an eye on her paternal inheritance. One reads in the first supplication that this monastery at the time had “a very bad reputation.” The second supplication, registered ten months later, says on the contrary that the monastery had “been reformed.” Katherina took the habit of a novice against her will, but she did not want to remain there in the long run. Before she had even turned eleven, her relative forced her “with threats and terror” to make a profession, which she tolerated only with protests, declaring that she wanted to leave the monastery and get married as soon as possible. Here her proctor inserted the well-known decretal about overwhelming force (X 1.40.1–9), to which she saw herself exposed and which we find alleged in other supplications as well. Only at the age of thirteen did she manage to flee the monastery. She laid aside the clothing of her order and married a nobleman from the bishopric of Eichstätt by the name of Hadmar von Absberg. His noble family was named after the castle lying near Gunzenhausen and had received the office of imperial arch-chamberlain in 1469. In order to counter possible objections to what she had done, she requested a papal declaration that she was no lon-

145. RPG 6.3466.

146. RPG 6.3612 and 6.3634.

ger bound to the order and the convent and could remain married to Hadmar. As usual, her request was referred to the bishop of Bamberg, who was instructed to decide in Katharina's favor as long as she truly had been forced to enter the monastery, had made the profession under force before her twelfth year of life, and had not later renewed the profession of her own free will.

As already explained above, a married woman who had consummated her marriage through the *copula carnalis* could not take the veil without the consent of her husband. A valid marriage could in general be broken up only with mutual agreement and under very precise conditions. It is not known whether Jutta Bollen from the bishopric of Utrecht had asked her husband for permission before she entered an order for religious reasons after her marriage and made a profession. If not, how would she as a nun, obligated to chastity, have been able to fulfill the legitimate demands of the spouse for the *debitum coniugale*? However that may be, after some time, she left her order's house, without giving any reason, returned to her husband, took up married life again, and had children with him.¹⁴⁷ In 1483 the two entreated the pope for permission to continue in their marriage. Provided that the bishop confirmed the information in the supplication, the major penitentiary and the auditor, Antonius de Grassis, acquiesced.

In the case of Elisabeth Prick, the story of her apostasy went somewhat differently.¹⁴⁸ When she was five, her parents had given her to the White Women's Convent (Weißfrauenkloster) in Aachen, "in which many girls were raised in morality, manners, and the powers of discernment until they reached marriageable age." At least that was what the parents thought. The nuns, however, used threats, beatings, and also persuasive words to bring Elisabeth, without her parents' knowledge, to the point of making a profession before she had reached the age of fourteen. She stressed in her supplication that she had never wanted to remain there but wanted to get married and have children instead. For this reason, with the help of God, she turned her back on the monastery and clandestinely mar-

147. RPG 6.3787.

148. RPG 5.2140.

ried a Philipp Schramuir from the diocese of Cologne and had children with him. She asked the pope for absolution for the apostasy and confirmation that her marriage was lawful and the children were born legitimately. The penitentiary agreed to that, demanding only the proof, as usual, that the profession had been made prior to her fourteenth year and under pressure.

In the case of Barbara Roderin, it was the "evil step-father" who gave the impetus to the *monacazione forzata*. After Barbara's father's death, her mother had remarried. Her second husband wanted to be rid of his step-daughter and gave her at the age of nine to the Augustinian convent of Engelthal in the diocese of Bamberg.¹⁴⁹ In her supplication, Barbara complained that her step-father had already repeatedly posed threats to her young life, once by throwing her out of a window, another time by wanting to let her freeze in wintertime. Now he threatened her anew with death if she did not make a profession, which she did, paying heed to her predicament. But then her life took a different turn, and we already know how. She laid aside her habit and turned her back on Engelthal. With the reasoning that she wanted to get married and have children, she successfully made a supplication to the pope in 1470.

All the information gathered thus far about runaway nuns stems from the register of the penitentiary. As a person who, with a lot of patience and luck, could ferret out the fates of individual *monache forzate* in regional archives, Barbara Vannotti has convincingly put together the cases of three noblewomen. With the help of local sources, she has managed to elaborate on fairly specific circumstances, which has allowed her to leap successfully over the cloister walls and to gather biographical details beyond the dry claims in the penitentiary supplications.¹⁵⁰ These examples pertain to Magdalena Payer, the eldest daughter born around 1420 to a Konrad Payer from a well-off knightly family in Constance, whose ancestral seat, the castle of Hagenwil, lay in today's canton of Thurgau; Countess Guta von

149. RPG 5.2152.

150. Barbara Vannotti, "Monacazione forzata. Klosterzwang und Klosterflucht adliger Frauen im Spätmittelalter" (Lizentiatsarbeit in the Faculty of Philosophy, University of Zurich, 2003).

Wertheim from the bishopric of Würzburg, born around 1430; and Ursula Schenkin von Erback from the Odenwald, who saw the light of day around 1450.

In the first case, the penitentiary archive preserves only a *littera* that was registered on December 29, 1438 and directed to the bishop of Constance. It makes reference to the fact that Magdalena Payer was “placed in the Augustinian women’s monastery of Münsterlingen on Lake Constance at the age of seven by her father, who wanted to withhold her inheritance from her.”¹⁵¹ Magdalena had protested this move with a notary (*publice*) and also refused to make a profession. When the father received report of his daughter’s protest, he came to Münsterlingen, beat her, and threatened to incarcerate her, and, if she should run away from the monastery, to have her killed. As a result, her eyes filled with tears and the fear of death, she finally made a profession. She later managed to flee from the cloister and then asked Pope Eugenius IV for the grace of a *littera declaratoria* so that she could marry, since she had no obligation to the monastery of Münsterlingen. Pope Eugenius commissioned, as usual, the bishop of Constance with investigating the case, and there ends the information from the penitentiary.

Apparently because of some resistance in Constance, the supplication was not successful on the first attempt, but Magdalena had submitted another supplication, this one to the papal chancery, almost at the same time as the above-mentioned supplication, on January 8, 1439. From this supplication we find out that she was already nineteen years old at the time. A further supplication, a *reformatio*, from August 9, 1440, was delivered from Rome to the official of Constance. In addition, Magdalena had the Council of Basel confirm the invalidity of her profession on March 5, 1442.¹⁵² A perusal of the numerous sources from the region of Lake Constance on her family lets one realize that she was successful in the end and who

151. RPG 1.1. Cf. also Barbara Vannotti, “Von der entlaufenen Nonne zur Schlossherrin: Magdalena Payer von Hagenwil. Zum Schicksal adliger Apostatinnen im Spätmittelalter,” *Schriften des Vereins für Geschichte des Bodensees und seiner Umgebung* 124 (2006) 93–110.

152. RG 5.6467 and REC 10590.

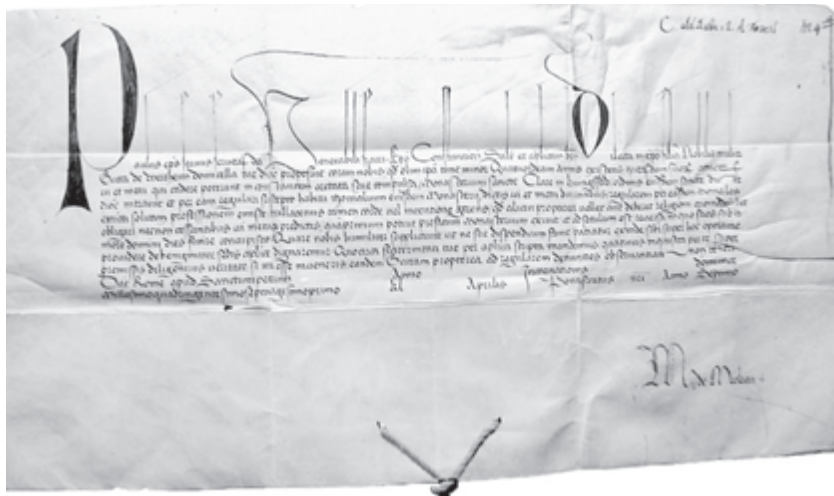


Figure 7. Pope Paul II frees Guta von Wertheim from her profession in the monastery of Königsfeld, which she had made under force, *vi et metu*, April 1, 1471. Rapperswil, Stadtarchiv C 2a 14.

was of assistance to the young lady as she made her clever moves. The results can be summarized as follows: the Payer family had long-lasting ties to the liberal convent of Münsterlingen, which was reformed and brought once more under a strict Rule only in 1497. The father's sister already lived there. He had married a second time and thus possessed an eminent interest in sending the daughter from the first marriage away. Magdalena's canonically trained adviser was her husband, Friedrich Heidenheimer, notary and scribe of Bishop Otto III of Constance, who in the 1440s had paid taxes in the episcopal city on a fortune of more than 8000 pounds of Hall coins and acquired the castle of Klingenberg. Magdalena had married this rich citizen after her father's death and bore two sons and two daughters, as she had desired in her supplication to the penitentiary preceding the above-mentioned *littera*. She outlived her husband by fifteen years and died before 1479. It is in the penitentiary that we find the beginning of the thread for her life's story.

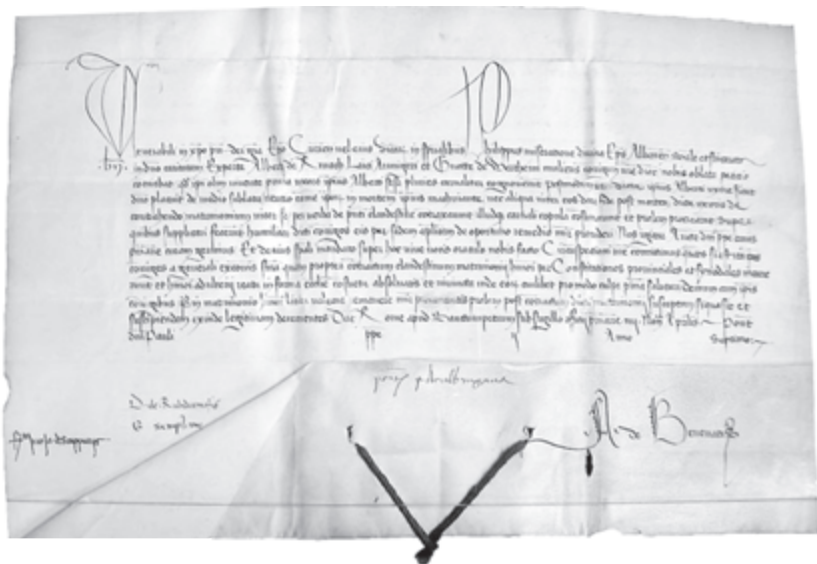


Figure 8. *Littera* from the major penitentiary, Philippus, to the bishop of Chur granting absolution and dispensation for Guta von Wertheim, April 2, 1471.

The supplication is in RPG 5.1906. Rapperswil, Stadtarchiv C 2a I5.

The second case is even more detailed, involving the flight from a monastery and the marriage of Countess Guta von Wertheim, documented both in papal letters and in extensive sources pertaining to her family, among which are twelve letters composed by the countess herself.¹⁵³ According to a statute of the house of Wertheim from the year 1398, which provided for the marriage of only one daughter per generation, as the next-to-the-last of eight children of Count Michael, Guta had no chance of marrying in accord with her social status. As a result, at the age of twelve in 1442, after her mother's death and against her will, she was put in the convent of Königsfeld by her guardian and brother. Naturally, she obeyed only *vi et metu*.¹⁵⁴ During a visit to the monastery, Albrecht von Rinach, who

153. Vanotti, "Monacazione forzata," 60–87.

154. RPG 5.1906.

at the time was married but was involved in a fierce dispute with his wife, Verena von Baldegg, met Guta, kidnapped her abruptly from Königsfeld, and made her his concubine, as the two admitted in their supplication. The sources do not say what the young, noble virgin had in common with the shady swordsman, or when the kidnapping or escape is to be dated. What is certain is only that, at the time of their supplication, April 2, 1471, the legitimate wife, Verena, had long since been dead. The union with a daughter from a family of high nobility produced at the very least an increase in prestige for the non-noble Albrecht. He and Guta had most likely already lived in their adulterous concubinage for more than twenty years in Rapperswil or somewhere in the bishopric of Chur. Guta survived her husband, who died in 1475, and lived another twenty years in Rapperswil on Lake Zurich.

It is probable, because of the severity of the offense—first Guta's flight from the monastery, probably even kidnapping, then the adultery extending over several years, and then the excommunication because of the clandestine marriage—that the two appeared personally in Rome and received the papal documents necessary for absolution and the legitimization of their children. With the help of a proctor, the proceedings took only nine days. All of these documents lie preserved in the original in the municipal archives of Rapperswil, among which there is a letter of indulgence and of confession as well as the authorization of a portable altar.¹⁵⁵ Without the active help of the clever proctor de Albingana and not inconsiderable hand-greasing, this papal pardon could not have been obtained in such a short time. Similarly, the fact that the papal letters issued to them were committed to Constance and Chur and not to Guta's ordinary, the bishop of Würzburg, with whom her house lay in constant feud, suggests that the couple exercised direct influence by being physically present at the curia. In order to pay the probably not inconsiderable cost of her rehabilitation in the church, after 1471 Guta put much effort into coming into at least a portion of her inheritance in Wertheim, as can be seen in her letter to her brother Wilhelm. The usual

155. The letter of confession is in RG 5.4594. The sources are in the municipal archives of Rapperswil C 2a I 5 and II 10.



Figure 9. Mandate to Bishop Hermann von Konstanz to carry out Paul II's bull (figure 7) for Guta von Wertheim, May 20, 1471. Rapperswil, Stadtarchiv C 2a 16.

cost for the fees for the *litterae* came to seven or ten *grossi* tournois.

The heroine of the third case, Ursula Schenkin von Erbach in the Odenwald, which belonged in the bishopric of Mainz, was a rebellious, self-confident young noblewoman from a family of counts. She ran away not once, but three times, one after the other, from two spiritual institutions. Three supplications in the register of the penitentiary constitute the chief sources for her story. Moreover, there are several supplementary documents in Zurich for her and her husband, Johannes Zeig.¹⁵⁶ For all that, some parts of her biography, fragmentary in its transmission, remain hypothetical. The hard facts according to her supplications are these: at a young age, before the year 1468, she was given to the Benedictine abbey of Frauenalb in the diocese of Speyer by a relative of her family, Count Bernhard II von Eberstein (1430–1502), *vi et metu* and against her will. According to the supplication, Bernhard was supposedly the “overseer and protector” of the nuns, and, in fact, the family von Eberstein along with the margraves von Baden did act in the capacity of stewards

156. RPG 6.3475 (year 1472), 3552 (year 1475), and 3558 (year 1475).

for the monastery founded by them at the end of the twelfth century. Before Ursula's probationary year expired, Bernhard and the nuns forced her to make a profession, for which reason she ran away from the monastery and did not want to go back, as she publicly declared. But Bernhard and her family captured her again and brought her back to Frauenalb under threats of death. Later they took her to Fraumünster in Zurich, "in which monastery she was then held for four years," as the second supplication says. Ursula's membership in the convent on the Limmat River is proven multiple times in the financial records of the Fraumünster abbey in Zurich for the years 1467–74. There is something to the speculation that she left because of the reform of Fraumünster initiated by Bishop Hermann von Breitenlandenbergh in 1470, especially since her contact with the abbey as well as the abbess, Anna von Hewen, is verified up until 1475. The over-shepherd of Constance had, to be specific, severely cut the privileges of the women of the choir. Ursula fled from Fraumünster with the help of a cleric of Constance, Johannes Zeig, whom she intended to marry. For the time being, they lived together without a marriage certificate and had children. The *littera* requested from the pope was supposed to certify for Ursula that she had no obligations to the monasteries of Frauenalb and Fraumünster and could marry Johannes. The request was handed over to the ordinary for the *veritas precum* to be checked. Unfortunately we do not know which ordinary, that of Mainz or of Constance.

For two-and-a-half years, nothing is heard of Ursula and her life partner in the sources. Apparently no *littera* was issued in response to the first supplication, or it was not carried out, for the couple had to present the same request again. A second supplication is dated from May 23, 1475, this time submitted by Ursula and Johannes Zeig, who is now called "a cleric from the diocese of Chur." The commission was again provided for an ordinary; this time it could only be either the bishop of Chur or of Mainz. We find out nothing new in terms of content, except that Frauenalb is qualified by the petitioners as a monastery "in which secular canonesses live, have private possessions, and do not take a vow of chastity" and from where she moved to Fraumünster "with the permission of the abbess and her brother." According to the words of the second supplication, in

Zurich as well there was “no vow of chastity” in effect for the nuns, “and they could wear luxurious clothes and sophisticated haircuts.” In view of the privilege granted to the nuns of Fraumünster in 1406 by Pope Innocent VII, this claim was completely true. Ursula had reserved a special position for herself in Zurich, which apparently granted her certain privileges, among which was the permission to receive visits in the convent.

Since substantially the same request was entered a third time in the register of the penitentiary three months later, on October 10, 1475, one must suppose that the second attempt before the bishop of Chur or in Mainz remained without success. In the third supplication, Ursula is now named “an inhabitant of Chur,” while her husband, Johannes, whom she wanted to marry “legitimately and publicly *per verba de praesenti*,” is now called “a cleric of Constance” once more. Since the signature from the penitentiary was the same among all three supplications, a positive decision could only have run aground during the investigations by the respective bishops. While nothing is to be found about Ursula and Johannes in the sources of Chur, there is proof for Johannes’s stay in Zurich. Since the beginning of the fifteenth century, his family owed taxes there and lived at Kirchgasse 6. Johannes, “a cleric in training” (*schuoler*) since around 1467, moved into the house “zum Gùlden Ring” on today’s Kappelergasse and appeared in the tax lists until 1470. The sources are quiet about Johannes Zeig between 1470 and 1484. Was it in these years that he lived with Ursula in Chur? They do not leave any trace, however, in the archives there. Since Johannes is testified to as a priest in 1488, Ursula was by this point already dead, or had returned once more to a monastery. The church did indeed, as has become clear in all the examples in this section, place marriage and family above an invalid profession and thus protected runaway nuns. As headstrong noblewomen, Ursula’s and Guta’s rejection of the dynastic forces of the late Middle Ages has secured a memory for them only in the ecclesiastical and papal sources, not in the *saeculum* to which they wanted to return. Their conduct went against the status quo too much.¹⁵⁷

157. Cf. Barbara Vannotti, “Die Flucht der Schenkin von Erbach aus der Fraumünsterabtei in Zürich,” *Odenwälder Jahrbuch für Kultur und Geschichte* (2004), 9–20.

Canon Law—An Instrument for Divorce?

Everyone knows that the law of the Catholic Church does not recognize divorce, even today, but only the annulment of an incorrectly contracted marriage. The older literature about medieval marriage processes represented the thesis that one had easily been able to achieve a “divorce” before an ecclesiastical court with appeal to canonical impediments to marriage. Was that also possible in the fifteenth century? Marital impediments did indeed mean that a lawful marriage could not come about, but the intention of the law and courts was not for those impediments to serve as an instrument for divorce. Can we exclude the possibility that canon law’s strong prohibition against incest, for example, was used as “an instrument for divorce” by many persons astute in marriage law or by their procurators? In fact, one can with some justice impute such an intention to the petitioners of some supplications.

The first case of this kind comes from the bishopric of Utrecht; it was submitted to the penitentiary in 1476.¹⁵⁸ One can infer that the man making the proposal was not striving for a dispensation but rather for separation from his wife under the pretext of incest. The couple, who had contracted their marriage *publice per verba de praesenti* and had consummated it without realizing that an impediment existed, found out later that the man and his wife were bound by a relationship by marriage in the second degree, an *affinitas superveniens*. This had arisen from the fact that, before the wedding, the man had on several occasions had sexual intercourse with a certain Katharina, who was related by blood to his wife in the second degree. The husband appeared in the supplication as the petitioner and wanted a declaration from the penitentiary that he was free for a new marriage. One can gather from the signature that the local bishop was supposed to act in accord with the requester’s wish if the statements made by him were true. Did the husband want to get rid of his wife under the pretext of incest or did he really suffer a crisis of conscience on account of the close relations?

The reading of a supplication of Magnus Schmidt from Steinhau-

158. RPG 6.3579.

sen in the bishopric of Constance yields the same impression, that a man wanted to get rid of a temporary lover in a painless way by referencing an incestuous relationship.¹⁵⁹ Not being aware of any impediment, he and Elisabeth had pledged marriage to each other and then consummated it. Was the marriage pledge the woman's condition to get sexually involved with Magnus? Only afterwards, or so he claimed, did he find out that he was related to Elisabeth by blood in the second degree. That does not sound very believable, for then the two must have been cousins. And the good Magnus supposedly did not know that? However that may be, he let Elisabeth go, which can only mean that he revoked his pledge of marriage. He then married a certain Margarete, with whom no marital impediment stood in the way. Why did Magnus make a supplication at all? He claimed that "several simple-minded people and those unversed in the law" could question the legality of the second union. One could in fact have done so, and for good reason, for a demonstrable pledge of marriage combined with the act of sleeping together established a valid *matrimonium*. In view of similar cases, the supposition that his first bride could have numbered among the "simple-minded people and those unversed in the law" has much to say for it. Magnus requested a *littera declaratoria* from the penitentiary to the tune that no marital bond stood between him and Elisabeth and that he did not have to return to her. But Elisabeth could have managed just that before the officialate of Constance. So Magnus made the request to the pope to be able to remain in his marriage with Margarete. As usual, the auditor referred the request back to Constance and ordered a new process. Its outcome leaves no trace in the south German archives.

In the cases just presented, the intention behind the separation remains a matter of speculation, but one discerns unmistakably a deliberate utilization of canonical marital impediments for the purpose of a divorce in a supplication from the diocese of Bamberg that reached the penitentiary in the year 1476. Once again, a man was the driving force.¹⁶⁰ Stephan Herwer claimed to have contracted a marriage with Anna Neglin, without the couple being aware of a ca-

159. RPG 6.3604 (year 1476).

160. RPG 6.3606.

nonical impediment. Prior to the customary ceremonial wedding in a church, “as was typical,” they consummated the marriage and had children. Only later—when exactly is not said—did they gain knowledge of the marital impediment, namely, consanguinity between them in the third and fourth degree. This impediment would have been easy to remove through a papal dispensation, as happened many times in the cases of other couples. The man nevertheless advanced the pangs of conscience and claimed that “he could not in clear conscience remain any longer in the marriage that had been contracted and consummated and blessed with children.” He therefore declined the ceremonial celebration in the church (*sollemnisatio*). In contrast, Anna, who was taken by surprise, insisted on staying in the marriage and dragged Stephan before the officialate court of Bamberg. The episcopal judge apparently could not bring himself to make a judgment in the case. That was entirely correct, for dispensation could have been received from Rome alone, and he therefore referred Stephan to the apostolic see.

Following this advice, Stephan submitted a supplication. He again asserted that his conscience did not allow him to live with Anna in a forbidden marriage. He much preferred to wed another woman and thus pleaded for a declaration (*littera declaratoria*) that no bond of marriage existed between him and Anna and that he could marry another woman. How would the penitentiary decide? Did the plagued conscience of Stephan weigh more than his pledge of marriage given to Anna, the consummation of their marriage, and their children? Antonius de Grassis, the experienced auditor, together with the major penitentiary, Cardinal Julianus, decided according to the proven practice of the office: Stephan’s request would be referred back to the bishop of Bamberg and thus to the official. He was supposed to unfurl the case again, summon witnesses, and above all Anna. If the request proved to be legitimate and the two were related to each other in the third and fourth degree, the bishop was to grant Stephan’s request. Since he had not asked for any dispensation from this marital impediment, over which only the pope had jurisdiction, the decision lay once more in Bamberg. One would like to know how things turned out, but the sources do not tell us.

Heinrich am Fürenberg from the archbishopric of Salzburg was also plagued by his conscience, as he claimed in his supplication, but without clearly explaining the reasons for the discomfort.¹⁶¹ He had a lover with whom he frequently shared his bed before 1481. But then he changed partners and began a new relationship with Katharina Galserin. Heinrich did not call this union “marriage” (*matrimonium*) but rather “cohabitation” (*contubernium*)—one could also say “concubinage.” The only problem was that “a consanguinity in the first or second degree” existed between this Katharina and his earlier bedmate; that means the two women were sisters or cousins. Moreover, this *contubernium* had yet another strike against it, that it had been entered into clandestinely. That comes as no surprise, for how would a duty-conscious priest have been able to announce the banns of marriage in such a case? Heinrich and Katharina lived for some time together and had children. The reasons that the present supplication had been entered in the register of the penitentiary could be many. Either Heinrich’s first lover dragged him before the officialate court, or the episcopal marriage court officially took action against this illegal union, or Heinrich grew tired of both women. After all, it would have been possible to achieve a canonically unobjectionable marriage with one of the two women with some good will and with the help of the usual dispensation. Heinrich wanted nothing of the sort; instead, he wanted a papal declaration that he was not bound to either of them but could contract a marriage with a third woman and have children. As usual, the penitentiary referred his request back to the archbishop of Salzburg, but with the condition that his request be granted only if things were in fact as the petitioner claimed.

The text of a supplication from Leonard Mair registered in Rome on the same day, May 26, 1481, reads to the word exactly as Heinrich’s supplication, and so we can suppose that the same proctor drafted them both.¹⁶² Leonard also had had a lover but had then begun a *contubernium* with Dorothea, who was related by blood to his first girlfriend in the second degree. The *contubernium* was also clandestine and produced children. His conscience weighed upon him so

161. RPG 6.3729.

162. RPG 6.3730.

heavily that he absolutely wanted to marry a third woman. The decision of the office of penance and pardon was exactly as in the previous case. Do we do an injustice to Leonard if we find his reasons somewhat empty in view of existing possibilities for making his relationship legitimate? One must know that the papal penitentiary always respected the conscience of individual *petentes* in numerous other supplications as well. *Ecclesia de occultis non iudicat* ("the church does not judge secret matters"), as an approved canonical principle stated.

Kaspar from the parish of Matrai in the bishopric of Brixen reached the archiepiscopal appeals court in Salzburg.¹⁶³ After he had had intercourse *actu fornicario* several times with a certain Barbara and had in fact pledged marriage to her, she brought charges against him before the officialate court of Brixen. The judgment went in her favor; Kaspar was awarded her as her husband. Within the allotted time, the man made an appeal to Salzburg. But since Kaspar had admitted to having also gone to bed with Agnes, Barbara's sister, and therefore presented a case of *affinitas superveniens* as well as incest, the archiepiscopal official referred him to the apostolic see. Kaspar's goal was obvious: not to have to marry either of his two bedmates, either Barbara or her sister. By appealing to the impediment of the too close relationship of the two women, he thus moved to be granted absolution from incest and a dispensation to be able to marry any other woman who was not related to him. In this case as well, the supplication apparently served only the end of keeping both women at bay. On a purely formal basis, there was nothing to object to in the demands of the three men from the archbishopric of Salzburg; the demands may, however, have corresponded less to the spirit and intention of canon law.

In contrast, tragic circumstances led to Bavo, son of Sipko from the Friesland region of the bishopric of Utrecht, being separated from his wife.¹⁶⁴ At fault in his misfortune was an epidemic rampant in the Middle Ages. Bavo had married a certain Ulne *per verba de praesenti*

163. RPG 3.1778.

164. ASV PA 45 fol. 256v (year 1495).

and consummated the marriage with her. "After a certain time, visible signs of leprosy appeared on his wife," as the supplication states. Leprosy has a long incubation time and was incurable in the Middle Ages; lepers were gathered and isolated in special hospitals (leper hospitals), as canon 23 of the Third Lateran Council in 1179 had ordered. In the fourth book of the *Liber Extra* there is a single title *De coniugio leprosororum*, in which it is determined that "a leprosy that appears does not dissolve an existing marriage."¹⁶⁵ Only in the case of an engagement (*sponsalia de futuro*) could the non-sick partner marry another person (X 4.8.3). This norm was not followed, however, in the case of Bavo and Ulne. "A certain deacon," the text of the supplication continued, "who possessed jurisdiction over the two, had separated them." The words of the supplications do not exactly illuminate whether the spiritual judge had decreed only a separation from table and bed, in accord with the canon of Lateran III, or had in fact broken up the marriage. However it may be, according to the information in the supplication, Ulne refused to live with Bavo and "gave him the permission to marry another woman of his choice." Afterwards, Bavo publicly contracted a marriage and consummated it with a certain Doed, all the while Ulne was still alive. She later died of the leprosy and Bavo (this is the reason for the supplication) asked the pope to be able to remain in his second marriage. The penitentiary correctly handled the matter as a case of adultery. Using the relevant quotation from the decretal, the regent decided the pardon was to be granted "as long as neither of the two were involved in Ulne's death." With that sentence, the dubious decision of the deacon of Utrecht was also upheld.

"The Error of Person" and Conditional Contractions of Marriage

One of the most flexible legal constructions of medieval marriage law and one that was not protected from abuse was "the error of person" of the partner (*error in persona*). Gratian had already dis-

165. Inscription of X 4.8.1. (Alexander III).

cussed the problem in detail at the beginning of Causa 29 in his *Decretum*. The concept holds a firm place even in the canon law in force today. In what does this “error of person” of the married consist? In fact, it has nothing do with a marital impediment but with a veritable ground for dissolution. Since we do find cases of this kind in the penitentiary supplications and we cannot dismiss the suspicion that this legal formulation was misused for divorce (in the modern sense), we must deal with the topic here.

Let us begin with two genuine cases of the error of person. Gertrud von Lakendorff, a noblewoman from Constance, fell for the trap of an impostor. A certain Markus von Pfalheim had courted her, portrayed himself as a rich nobleman, and claimed to name numerous properties and castles as his own in the region of the Baltic. He was able to move her friends and relatives to give Gertrud to him as his wife; they married in Germany and had children. After some time, when Gertrud wanted to move to be with her husband near the Baltic, she found out that Markus was in reality a swindler and an apostate of the Teutonic Knights. Fraudulently deceived, she had “lost her marriage and her good reputation.” Out of shame, she no longer dared to return to her family, and thus she lived until the time of the supplication, in the year 1470, in the city of Ulm. Understandably, Gertrud asked the pope to declare her marriage to the northern null and void, so that she could marry someone else. The experienced auditor of the penitentiary, Antonius de Grassis, decided to transfer the matter, as usual, to the bishop of Constance; the latter was supposed to clarify whether Markus had made a profession in the Order of the Teutonic Knights prior to contracting the marriage with Gertrud and, if so, to grant her the permission to marry again.¹⁶⁶ We are dealing here with a clear case of *error in persona*, on which principle Rome was prepared to declare the marriage null and void.

In a way similar to Gertrud von Lakendorff, Susanna Previgne from Vienna had also been deceived. She had been engaged to Sebald Rauscher from Nurnberg before 1480.¹⁶⁷ Soon after his pledge

166. RPG 5.2147.

167. RPG 6.3714.

of marriage, Sebald deviated from the path of the moral life and committed several crimes for which he “was marked on his nose, ears, and upper lip” with branding marks, the usual degrading bodily punishments of the time. It is no wonder that Susanna no longer had a desire to marry such a disfigured criminal. Since an unconsummated engagement, in analogy with Alexander III’s decretal (X 4.13.2), could be dissolved by the pope, it would not have presented any legal problem for the bishop of Bamberg, to whom the affair was transferred for investigation, to comply with Susanna’s wish and issue a confirmation that she could get married again. In this case, he did not have to rely on the *error in persona* as a ground for his decision, although Susanna might well have been deceived as to Sebald’s character.

When someone wished to dissolve an engagement, *error in persona* was in fact advanced quite frequently. The pope could decide to dissolve such engagements without any problem, as long as the marriage had not been consummated. Again, the basis for this was the decretal X 3.14.2. Martin Kaufmann from Prague had at one point gotten engaged to Barbara. Later, as he explained in his supplication for the dissolution of his engagement, he found out that Barbara had been a priest’s concubine several years earlier.¹⁶⁸ She had even “killed” a child to whom she had given birth “with her own hands,” as she herself had admitted to Martin. Out of shame for this monstrous crime, she now moved to another city and got married there. For his part, Martin also got married and wanted a papal declaration that he had legally been allowed to do this.

An interesting question in this connection consisted of the topic of virginity. We have already spoken more than once of the fact that men of the time expected the women they selected still to be virgins; otherwise they would not enter into a marriage with them. Medieval canon law did indeed permit the conditional contraction of marriage, because the fourth book of the *Liber Extra* contained a single title with seven chapters under the rubric *De conditionibus apposis in desponsatione*, which discussed admissible conditions. Immoral con-

168. RPG 6.3689.

ditions and those against the essence of marriage were of course excluded (X 4.5.7). One should not think that these paragraphs would have possessed no reference to late medieval reality; the penitentiary supplications teach us better, as the following stories prove.

Nikolaus Hane from the northern German diocese of Kammin intended to marry a certain Slaweke, whom he assumed was an irreproachable virgin.¹⁶⁹ He promised to marry the lady, who was living in the neighboring bishopric of Havelberg, with the words: "If you are still a virgin and maintain your virginity until I bring you home, I will marry you publicly." He explicitly stressed in his supplication that he had not gone to bed with Slaweke. After this marriage contract had been agreed upon in this way, he got wind that Slaweke was not able to keep to the set conditions. Not only was she no longer a virgin but she was a *corrupta*, and not only had she already given herself to a certain Nikolaus Pole before her marriage contract, she had even given birth to a child by him. Nikolaus Hane found all this out only later, and it then became clear to him that Slaweke had thereby violated their marriage contract, for, if he had known of her loose life, he never would have had the mind to pledge marriage to her. The penitentiary acknowledged his argumentation and instructed the bishop of Kammin to investigate the case and declare Nikolaus Hane to be free, provided his statements about Slaweke's conduct were confirmed at court. It was, after all, a matter only of a marriage contract *per verba de futuro*, to which Nikolaus had bound the stipulation of virginity. For her part, Slaweke had not sued at the papal curia for the restoration of the contract from which Nikolaus wanted to be free, which she theoretically could have done, but simply gave up on her Nikolaus.

Two years later, in a supplication brought before Rome by another woman, Margarete Steuber from Salzburg, the penitentiary again faced a practical example of conditional marriage.¹⁷⁰ Margarete had at one time publicly and *per verba de praesenti* married a fellow countryman, Johannes Chalsis, and consummated the marriage with him. With that, the marriage would actually have been valid, but Jo-

169. RPG 6.3494 (year 1473).

170. RPG 6.3586 (year 1475).

hannes had made as a condition of *ratificatio* (perhaps the *sollemnizatio* is meant by the term) that “Margarete would have to live decently and chastely.”¹⁷¹ A little later, Margarete wanted nothing to do with the marriage contract with Johannes. She married a man named Andreas from the diocese of Freising, likewise *per verba de praesenti*, and also had sexual intercourse with him. As she then learned from her proctor, this relationship was not considered marriage (*matrimonium*) by canon law but concubinage (*contubernium*). And this turned out to be to her advantage.

To be specific, Johannes tried to get rid of Margarete when he found out about her less-than-chaste behavior. Apparently the two did not live together. His suit had success before the official because he stated under oath never to have contracted a marriage with Margarete. (The supplication does not say whether this suit was successful in Salzburg or in Freising.) He probably understood the above-named condition in this sense. Margarete meanwhile did not let herself be intimidated by the episcopal judgment. In contrast to Slaweke mentioned above, she had the law on her side and, for whatever reason, wanted to return to Johannes or perhaps wanted only financial compensation. Her path to Rome was crowned with success, for, after her marriage with Johannes had been consummated, despite the conditions, no one could doubt its legality; the episcopal court must have been misinformed about the facts. Margarete requested a *littera declaratoria* containing confirmation that her marriage with Johannes was valid and that her relationship with the second man, Andreas, had been merely a *contubernium* that did not affect her marriage, apart from the sin of adultery. Antonius de Grassis concurred with this argumentation when he referred the case back to the ordinary and wrote that, if Margarete’s claims were confirmed and after Andreas was questioned, he should make a judgment in her favor.

Georg Püttner from Würzburg had also placed conditions on his bride, Kunigunde, before his anticipated wedding. She claimed still to be an untouched virgin, and Georg said that he would take her

171. Ibid.: “eidem Margarete si probe et caste vivere contingeret, matrimonium ratificare promisit.”

as his wife if she really was a virgin at the time of their marriage contract and promised to lead an honorable life.¹⁷² Later, however, without having gone to bed with Kunigunde, Georg found out that her purity lay long behind her, and she was no longer a virgin. Instead, she had been sexually involved with several men. For this reason, their marriage contract was nullified, since she had not fulfilled the set condition.¹⁷³ The penitentiary decided that, if the petitioner's claim that Kunigunde was no longer a virgin before her contract with Georg was true, the bishop could allow him to marry another woman. The ideal of virginity was evidently also held high in Rome and recognized as a legitimate condition for contracting a marriage.

Impotence as a Ground for Divorce

Even today, according to the doctrine of Catholic theologians and canonists, impotence represents one of the very few grounds for dissolving a validly contracted marriage. The *Codex iuris canonici* issued by Pope John Paul II in 1983 summarized the situation as follows in §1084: "Antecedent and perpetual impotence to have intercourse, whether on the part of the man or the woman, whether absolute or relative, nullifies marriage by its very nature."¹⁷⁴ The theological reason for the permission for divorce consists in the fact that the production of posterity is one of the three goals of every marriage (*fides, proles, sacramentum*); indeed, according to the view of some theologians, it is the only goal. Accordingly, if the necessary precondition, the physical possibility for sexual relations and procreation, is not present, such a marriage can be considered irregular and may be dissolved. The problems and methods of artificial fertilization apparently did not occasion the Catholic Church in 1983 to view *impotentia coeundi* differently than in the Middle Ages.

172. RPG 6.3673.

173. Ibid.: "cum autem matrimonia, que sub conditione vel modo fiunt, non adveniundo conditione nullum sortiantur effectum."

174. CIC (1983) Liber IV c. III can. 1084 § 1. English translation available at http://www.vatican.va/archive/ENG1104/_P3Y.HTM. Accessed 17 March, 2011.

Since the twelfth century, canonists have discussed the argument about impotence with the same intensity as modern legal historians. Gratian had succinctly and correctly summarized the teaching of the church on this matter up to the middle the twelfth century. The redactor of the *Concordia discordantium canonum*, as Gratian had named his *Decretum*, accordingly wrote in C.27 q.2 d.p.c.29, "Should the impossibility of copulating be discovered prior to any physical act of copulation, that makes the woman free to take another man as her husband" (*impossibilitas coeundi . . . si vero ante carnalem copulam deprehensa fuerit, liberum facit mulieri alium virum accipere*).

Not all canonists shared Gratian's opinion; even at the time of Pope Alexander III (1159–81) and Innocent III (1198–1216), his view could not yet be described as *communis opinio*. The popes Celestine III (1191–98) and Honorius III (1216–27) added what would later become a very important detail to the doctrine of the consequences of impotence by explaining that only after the effort to consummate a marriage sexually had continued without success for more than three years did a sufficient basis exist for a dissolution of the marriage.¹⁷⁵ That detail serves as a guide for understanding the decisions made later by the penitentiary. Yet, even in the thirteenth century, several decretists still doubted whether a pope had the right to dissolve a marriage because of impotence. For the further development of canonistic doctrine, the gloss of Johannes Teutonicus on the relevant text in Gratian proved important,¹⁷⁶ for his text became the standard for the interpretation of that text, and he followed the view of the master that a marriage could be broken up because of permanent impotence.

We will leave this brief summary of canonistic doctrine at that.

175. X 4.15.5 and 7.

Translator's Note: For an introduction to the issue of impotence in canonical writings of the late twelfth and early thirteenth centuries, cf. James A. Brundage, "Impotence, Frigidity, and Marital Nullity in the Decretists and Early Decretalists," in *Proceedings of the Seventh International Congress of Medieval Canon Law* (Cambridge, 23–27 July 1984), ed. Peter Linehan, *Monumenta Iuris Canonici*, Ser. C, vol. 8 (Vatican City, 1988), 407–24. Brundage also discusses impotence at various points throughout his *Law, Sex, and Christian Society in Medieval Europe*.

176. *Glossa ordinaria* to C.32 q.7 c.25 and C.33 q.1.

The real world of German couples that found themselves confronting the phenomenon of impotence in the late Middle Ages adds butter to the plain bread of learned law. Astonishingly, the topic of impotence is not a rare subject of discussion in the papal register or in the diocesan courts. One should emphasize that it almost exclusively deals with the *impotentia coeundi* of the man. Insights into the biological context for human procreation that are familiar to us today were not a given at the time for either theologians or physicians. Interestingly, it is always women who approached the pope with the request to be able to marry another man—one who was potent, it was hoped. A firmly established decision process on the part of the penitentiary in supplications of this kind shows itself equally clearly. It confirmed the validity of the legal prescriptions of the relevant decretals, which had become uncontroversial, and disseminated them throughout Christendom.

The clear-cut legal position permitted not only the penitentiary but also bishops to declare a marriage null and void because of impotence and to allow the affected parties to marry again. Both the papal and the episcopal courts could take up this matter, since it was not material reserved for the pope alone. On November 28, 1478, the official of Constance had to judge such a case of impotence in the Dominican convent in the city on Lake Constance and held itself exactly to the letter of the law. The official proclaimed that, before he would dissolve their marriage, Ursula Fölysen and Leonard Ruch were to live together, attempting the *copula carnalis* for three years.¹⁷⁷ One also comes across supplications about this matter by looking through the register of the chancery and camera, where one finds a request from a couple from Trier. They had intended to get married in 1456 but had the problem that the woman declared that she had been divorced from her first husband by her ordinary on account of the husband's proven impotence.¹⁷⁸ Since she apparently did not trust the episcopal absolution, to be safe she asked the pope for confirmation that she could enter into a second marriage. A man from Augsburg was also declared impotent by an episcopal official

177. REC 15120.

178. RPG 3.1772.

and divorced from his wife, Anna.¹⁷⁹ In another case, Johanna from Liège had brought suit against her husband, Walter Hannesec, because of impotence and wanted dispensation from the chancery for a second marriage to Wilhelmus Reyneri de Lymen.¹⁸⁰ From Münster there is a report of proceedings before the officialate court that mentions a proper record of a suit because of impotence.¹⁸¹

Unfortunately sources of this kind, namely, records from marriage courts, are very rare *in partibus*. Yet, a relevant case before the marriage court of Chur, dated to December 1, 1456, is well documented.¹⁸² Magdalena from Schiers, age twenty, had raised a complaint against her husband, Bartholomeus, age eighteen. She had gotten married on the feast day of the Immaculate Conception; the husband demanded to receive his wife's dowry. She claimed, however, that he was not her legitimate husband because he was impotent and had never consummated the marriage with her. She had therefore left him soon after the wedding. After the Feast of John the Baptist, so towards the end of June, her friends advised her to try again to consummate the marriage with Bartholomeus. And although she "employed every care, embraced him, kissed him, and touched his genitalia," all her efforts at love remained without success. She added that she had "felt a slight movement of his genitalia and also some sperm." Magdalena made a motion for divorce, since she was still a virgin and wanted to have children by another man. If the woman's statements are surprisingly candid in light of the well-known prudery of ecclesiastical sources, of which we will shortly hear, then the confessions of the man in this case, who sought to have his marriage confirmed, spark even greater astonishment. Bartholomeus claimed "to have proven himself potent in relations with other women, even if not always and not in every way." "If the plaintiff lies on her back, I cannot consummate the act," he continued, "but it works lying on the side." He had had relations with other women in this way." Did

179. RPG 4.820, the signature reads *non approbando divortium*. Cf. also RPG 5.2112.

180. RG 7.1235 (year 1457).

181. RPG 5.2112 (year 1469): "... processo de et super [impotentiam] habito."

182. BAC Mappe 288 fol. 2r.

Magdalena want to get rid of her Bartholomeus on the pretext of his alleged impotence? The judge in Chur did not follow the relevant decretals in his judgment. He decreed that the couple should live together until fourteen days after Easter in the coming year—so not three years, but only a few months—“make an effort, do penance, pray, and perform other pious works.” Only after that would he make a decision on the matter.

In view of the scanty local sources, the references in the penitentiary’s register to the full power of bishops to grant dispensation in cases of proven impotence are also noteworthy. The first case handed down in the register that we want to study in detail was submitted in Rome under Pope Sixtus IV (1471–84).¹⁸³ Instead of personally travelling to the curia, the petitioner, Anna Murerin from Stieningen (Stühlingen?) in the diocese of Constance, had a proctor advance her request. At some time in the past, she had properly and publicly married Heinrich Schmiger with the intention of having children with him and in the expectation that her Heinrich would also be in the position to make that happen. Heinrich had also assured Anna of being capable of that. In contrast to many of the couples whom we have met in the supplications up to this point, Anna and Heinrich appear not to have gone to bed with each other prior to their marriage; otherwise she perhaps would have known about Heinrich’s deficiency earlier. It thus came out after the wedding that Heinrich could not consummate the marriage with Anna.

We cannot determine from whom Anna might have been illuminated as to the possibility of getting her marriage to the impotent Heinrich dissolved. In any case, her supplication composed by her legally savvy proctor, as is to be recognized in his citations from the *Liber Extra*,¹⁸⁴ corresponded to the model that promised success in cases of similar complications: she was still young and did not have a mind to living a life of continence; for this reason she wanted to marry another man, one who could fulfill her wish for children. She thus asked for a *littera declaratoria* that no marital bond existed between her and Heinrich and that she could enter into a second marriage.

183. RPG 6.3807.

184. X 2.24.26, X 2.28.60, and X 3.34.7.

The supplication had come before the auditor, Antonius de Grassis, to be checked over, who directed the customary referral back to the bishop of Constance. He gave very precise instructions based on the relevant canons of how the official there would have to proceed. Heinrich was to be summoned and additional witnesses questioned; the judge first had to investigate whether the wedding was at least three years in the past, during which time the couple had lived together without interruption. The official was supposed to make sure in addition that they had tried to consummate the marriage. But how could an ecclesiastical court look into a couple's bedroom and make a judgment on their sexual activities? In the example from Chur laid out above, the participants discussed even intimate affairs without shame, which might not have been all that rare in the fifteenth century. Canon law did not expect openness of that kind but fell back on an old legal practice in Germanic law, the so-called *Übersiebnen* (literally "more than seven"). If seven witnesses of good repute from each of the couple's extended family or, if necessary, neighboring community confirmed under oath that Anna and Heinrich had never "been of one flesh," as it was called drawing on Matthew 19:5–6, then the judge in Constance could allow Anna to marry again.

Heinrich and Anna's marriage had apparently already been in existence for several years, so that the term of three years was fulfilled. In other cases, when the request for separation was submitted shortly after the wedding, as, for example, in the case of Gaeta in Italy in 1477, the penitentiary demanded of the couple that they live together at least three years, "if the impotence could not be proven in some other way," as the Italian decision says without any specification as to how that could be done.¹⁸⁵ Only then could the failure to consummate be documented through the oath of seven witnesses on both sides from among the neighboring community or kin group. The supplications cite the above-mentioned relevant canons as well as current medical views, which were incorporated into legal texts. Gratian said that, according to medieval medicine, which was based on the doctrine of the four humors, impotence was the result of a

185. ASV PA 25 fol. 136r.

“natural coldness.” The desire for children likewise is expressed in the supplications with reference to the *Decretum* and the decretals.¹⁸⁶ The formulation for the second marriage stems from the *Liber Extra*, whereas the *regula iuris* appealed to by Anna’s proctor occurs only on rare occasions in other matrimonial dispensations.¹⁸⁷

The auditor Antonius de Grassis’s penitentiary thus followed closely the given legal norms. The prescription of the three-year term (X 4.15.5) went back to Celestine III, as did the *Übersiebnen*. Although the “seven-handed oath” was ascribed in legal sources to a Pope Gregory, it in fact originated in the Germanic legal sphere and made its way into canonical texts via Regino of Prüm, Burchard of Worms, and Ivo of Chartres. The roots of the “three-year test” went back, before Pope Celestine, to Roman law and are to be found in the *Codex Iustiniani* (Codex 5.17.10) and a novella (22 c.6). Rufinus (d. before 1192) in his *Summa decretorum* and Bernard of Pavia (d. 1213) also appear to have known the “three-year test” before Celestine III. The “seven-handed oath” and the “three-year test” were practiced in the Catholic Church until 1917; only then did the era of medieval canon law come to an end.

Amidst all of the practices that seem remarkable to us today, we should not ignore the fact that, in the medieval world, thoroughly dominated by the appearance of manhood, impotence often played an important role in the game of rankings in the community. A story connected to this problematic appears in a supplication submitted by a cleric of Mainz, Nikolaus Steybe, named Rasoris, to Pope Sixtus IV in 1484.¹⁸⁸ His parents, he explained, had borne him about twenty years earlier while living together in a lawful marriage and had other children together as well. No one had ever doubted that he and his siblings were the legitimate posterity of their parents. When Nikolaus wanted to receive priestly orders, evil-minded people spread around the rumor that his father had been impotent and that he, Nikolaus, had not been born of a marriage but was instead the product of a fling between his mother and a priest. For this rea-

186. *Decretum Gratiani* C.33 q.1 c.2 and *Liber Extra* 4.15.7.

187. X 4.15.5; X 2.24.26; X 2.28.60; X 3.34.7; *Extravagantes communes* 5.7.4.

188. RPG 6.3818.

son, charged with an illegitimate birth, he could not immediately receive holy orders. In order to bring the malicious gossip to an end, he asked for a statement of his honor, specifying that he was his parents' legitimate child and thus could be admitted to consecration and receive an ecclesiastical benefice. The official of Mainz, whom the penitentiary charged with clarifying the facts of the case, had to hear witnesses, since the petitioner's parents evidently were already deceased. If the witnesses confirmed the petitioner's statements, he could be ordained a priest.

As we have seen, a judgment by an episcopal official preceded the supplications to the pope. In this way, Katharina was separated from her first husband, Petrus Kormann from Bellheim, in the year 1474 on account of his frigidity by a proper judicial decision of the bishop of Speyer. Petrus did not appeal the decision.¹⁸⁹ She nevertheless had to seek a papal dispensation because her second husband was related by blood to the deceased Petrus. The supplication of an Anna Humel from Freising addressed a further problem connected to impotence. Anna reported to the pope that she had once married Leonhard Hamhamer in a canonically correct way in the hope of having many children with him.¹⁹⁰ Her husband, however, proved to be "frigid, impotent, bewitched, and incapable of consummating the marriage." Impotence in the Middle Ages was often, as also in this text, traced back to a *maleficium*, some act of sorcery.¹⁹¹ The title for the relevant decretals in the fourth book of the *Liber Extra* also connects impotence and sorcery: "On the frigid and bewitched and the incapability of coitus" (X 4.15). Incidentally, Anna's experienced proctor had called the marriage with Leonhard an "alleged marriage" in order to demonstrate that Anna had justifiably left her husband because, after all, no lawful marriage could exist with an impotent man.

In her supplication to the Holy Father, the good Anna confessed "that she was not able to live a continent life" and therefore went to bed with a certain Konrad Reiß before the bishop of Speyer had duly

189. RPG 6.377.

190. RPG 7.2580.

191. On this point, cf. Catherine Rider, *Magic and Impotence in the Middle Ages* (Oxford, 2006).

separated her from Leonhard. She was pleased with the “correct” man, so they “lived together for years and had many children.” This *pas de trois* apparently played itself out under Leonhard’s eyes and with his tacit approval, but without a marriage certificate, perhaps in order to spare the poor man the public shame of being declared impotent in court. In the end the entire three-sided game came to its end; the episcopal court of Freising separated Anna and Leonhard because of impotence, but Anna lived merrily with Konrad somewhat outside of canonical legality (*fornicarie*). In order to end this sinful state, she ended up asking for absolution from the *fornicatio* that had gone on for years and for a *littera declaratoria* of the penitentiary that her marriage with Leonhard was invalid and that she could finally marry her Konrad in an ecclesiastically approved way. The regent in Rome found that the bishop of Freising should grant this if the separation from Leonhard was canonically correct.

A widow by the name of Margarete shamelessly attempted to make the most of the impotence of a man from Zwickau in the diocese in Naumburg around 1487.¹⁹² The comical widow had an affair with a very young man, from whom she became pregnant. In order to escape the disgrace of an illegitimate child, she came up with the idea of getting married again very quickly, this time to Bartholomeus Bucheler. Bartholomeus indeed told her that he was impotent “and his penis was dry and useless.” She did not tell him about the pregnancy but promised him to live chastely in her marriage with him. Bartholomeus was persuaded and married her publicly, of course without consummating the marriage. Before the ecclesiastical ceremonial celebration, Margarete gave birth to her child. Deceived and perplexed, Bartholomeus refused to observe the *sollemnisatio*. Margarete impudently brought charges against him before the official of the episcopal curia in Meißen, where the process was still pending at the time of the supplication to Rome. Given the legal circumstances, she probably faced little chance there of receiving Bartholomeus as her husband. He thus asked the pope for a *divortium* and the assurance that he was not bound in marriage to Margarete. The regent

192. RPG 7.2539.

found that the ordinary should grant his wish after consultation with experts and trustworthy men.

Up to this point, the supplications have always spoken of male impotence. In a rare example from the French diocese of Coutance, apparently in a suit brought by the husband, the court ordered a separation because the wife was physiologically incapable of consummating the marriage on account of vaginismus.¹⁹³ Wilhelm had lawfully married Michaela and “lived with her together in marriage for a long time in the endeavor to consummate the marriage.” “Michaela,” one reads in the supplication, “on the basis of an incurable sickness and an obstacle that could not be overcome, nevertheless proved to be incapable of consummating the coitus so that they could not become one flesh, even though they both strove for this without ceasing.” Since Michaela could not become a mother because of the permanent *impotentia coeundi*, as the supplication reads in Latin, Wilhelm petitioned the pope that he might be allowed to enter into a new marriage. The decision from Rome allowed the bishop to whom the proceedings were transferred every freedom to come to a judgment within the framework of canon law.

The *impotentia coeundi* lay with the woman in the next case too. According to his own statements, Kornelius Johannis from the bishopric of Utrecht had “tried for fourteen years to consummate his marriage physically with his wife, Thekla,” as the text primly puts it.¹⁹⁴ As we already were able to determine in the preceding supplication, proctors constantly had terminological difficulties in describing in precise terms a female impediment causing impotence without, as they well feared, becoming too “pornographic.” In Kornelius’s supplication, the text paraphrasing the anatomical sensitivity of his Thekla’s vaginismus reads as follows: “because of her narrowness (*artitudo*)¹⁹⁵ or another, insurmountable obstacle with which her body was ‘out of order,’ he, Kornelius, was not able to consummate the thing for which he had taken her as his wife.” Ultimately,

193. ASV PA 41 fols. 194r–194v (year 1492).

194. RPG 7.1623.

195. The inscription for X 4.15.6 speaks of the *arctatio mulieris* as the reason for the *impotentia coeundi*.

it seems that a friend at the Roman curia was able to get Kornelius out of this predicament. The further continuation of the story had nothing more to do with impotence, but it should not be suppressed, for it comes from the colorful side of life. Probably for a few florins, the “friend” prepared a curial text for Kornelius (the Latin text calls it *litteras missivas*), in which the apostolic see allegedly authorized that Kornelius could be ordained a priest under these circumstances. The document was also officially notarized. The episcopal curia in Utrecht trusted this legal instrument of the notary with the *littera*, apparently falsely advertised as papal only in terms of the text, and ordained Kornelius as a priest. Evidently only after the original had been set forward was the fraud uncovered. Unsurprisingly, Kornelius was suspended from carrying out his office. Since Thekla, however, was in the meantime sixty years old and no longer suspected of sexual failures, Kornelius received absolution from Rome for all his offenses and dispensation for the performance of priestly activities.

Towards the end of the fifteenth century, as becomes clear in two supplications from 1490 and 1491, which bring this section to a close, the practice of the officials became increasingly refined and raised the requirements for proof in matters of the dissolution of marriage on account of proven impotence. Elsa Gruderin from Basel had lived with her husband, Johannes Hammerschmitt, in marriage for three years. But since he was “by nature cold and was impotent for coitus so that he could not consummate the thing for which she had taken him as her husband, even though they made every effort, and they thus were not able to be deflowered and the two could not become one flesh,” as we read in their supplication with biblical language, she opened judicial proceedings against him before the official with the goal of having the marriage dissolved and of allowing her a second marriage.¹⁹⁶ According to canonical stipulations, the official instigated an investigation into Johannes’s natural frigidity and his inability to have coitus. The investigation showed that Johannes had also not slept with any other woman, which he also confessed in court. The judge nevertheless instructed the couple to live

196. RPG 7.2145.

in marriage for another three months and once more to see whether, with God's help, they could not consummate the marriage. Johannes eluded this judgment. The process about his impotence would already have been a burden to him; was he now, after three months, supposed to subject himself again to public disgrace? He thus made off and had disappeared without a trace more than two years before the supplication was submitted. With his disappearance, the process in Basel could also not come to a close in Elsa's favor. She nevertheless wanted to have children, and, since there was no more doubt about Johannes's impotence, she asked the pope to order that the process be brought to an end and that she be separated from Johannes. This was approved under the condition *si ita est*.

An additional increase in the requirements for proof, the expert medical opinion, can be observed in the following supplication. The penitentiary often demanded medical expertise before they made judgment in cases of second-degree murder; such expert opinions were also brought into play by *petentes* in so-called "butter letters." For a dispensation on account of impotence, the addition of expert medical opinion was something new. Jakob and Anna from the bishopric of Gniezno did not manage to consummate their marriage for several months because Jakob was "cold and his body bewitched."¹⁹⁷ After two years of living together without the desired success, Anna moved to open a process for the dissolution of her marriage before the archiepiscopal court. The bishop had gained knowledge of the impotence through statements of doctors made under oath, and he separated the two. Anna then got married again. Astonishingly, Jakob now similarly wanted approval for another marriage. As his reason, he specified needs for personal care; because he had to maintain his body and his property, he needed a wife as his companion. The penitentiary approved him this marriage, Joseph and Mary style.

Among the acts of the officialate court of Freising, one finds an expert medical opinion about Leonard Witte from Teyting, who was considered impotent by his wife, Barbara.¹⁹⁸ The doctor of medicine

197. RPG 7.2623.

198. AEMF, Heckenstallersammlung vol. 216, fols. 198r-v. See figure 10.

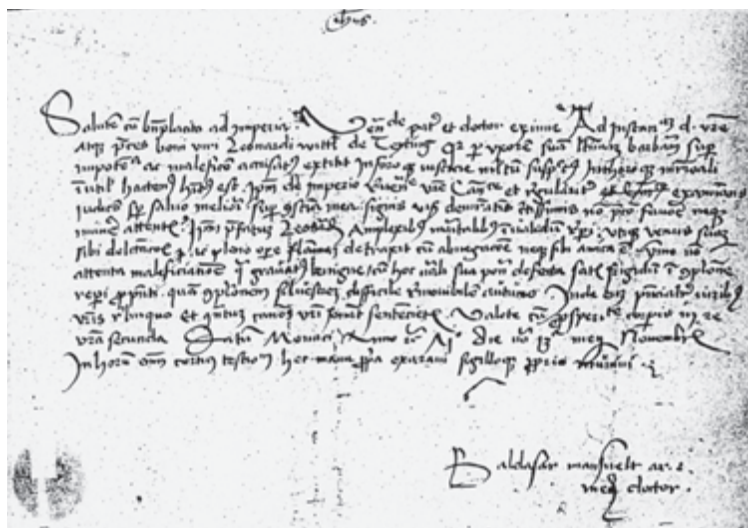


Figure 10. Expert opinion of Dr. Baldasar Mansfelt from Munich in a case of impotence. AEME, Heckenstallersammlung 216 f. 198r.

and of *artes* in Munich, Baldasar Mansfelt, had examined Leonard and given a written report to the marriage judge, Johannes Heller, a canon of Freising, on November 13, 1471. Leonard was “not suited for marital embraces,” and his impotence was not to be traced back to a *maleficium*. The doctor had determined that he was naturally impotent, and his condition “was difficult to remove.” In conclusion, he left the juristic decision in Barbara’s suit up to the marriage judge. Since “sorcery” was not in view, Heller would have been free to permit the woman to marry again.

Romeo and Juliet in Germany

Every century has its lovers who, “with their love, violate order and prohibitions” (Peter von Matt).¹⁹⁹ As everyone knows, William

199. Peter von Matt, *Die Intrige*, 331.

Shakespeare set up a literary monument to the young Romeo and Juliet from Verona, who pledged marriage to each other against their parents' will. His drama could have taken place in the fifteenth century, since the dominant practice of matchmaking in the late Middle Ages did not look much different. In the circles of the nobility and upper-class townspeople, the marrying off of young children through marriages arranged between the parents or families was the order of the day. In contrast, the church stubbornly advocated the freedom to choose one's partner against all paternalistic tradition. In the end, it had success. The supplication of Gerlach and Lytteken from Cologne offers an example of traditional parental "marriage politics." At their parents' command, they were designated for marriage when Lytteken was not even twelve years old, in other words, according to our thinking, when she was still a minor.²⁰⁰ When she reached marriageable age (in 1483), the young couple no longer had a mind to consummate the marriage and, with the help of a proctor who cited word-for-word the relevant decretals (X 4.1.29), had the engagement arranged by their parents nullified by the penitentiary. The official court of Cologne merely had to confirm that the two had been forced with *vis et metus* and, in addition, had entered into the marriage contract while still in their minority. Gerlach and Lytteken could then marry whom they wanted.

The supplications to the penitentiary not only show that the church advocated freedom in choosing one's partner but also prove that lovers in the vein of Romeo and Juliet could be met not only in Italy but also in the German empire. It cannot surprise us, then, that we find their traces in the papal secret archive, especially since couples who bound themselves to each other against their parents' wishes and without their blessing almost inevitably had to take refuge at the papal well of grace in order to defend their canonically protected freedom of choice against the family. If a young woman was in the position of defending herself against her parents' will, she could count on the full support of canon law.

Anna Schrottyrnyne had experienced that protection when

200. RPG 6.3776.

around 1479 she successfully defended herself against a forced marriage imposed by her parents.²⁰¹ Still a minor, that is, at an age under twelve years old, she was married *per verba de praesenti* by her parents and given over to her husband. She stayed six weeks with him. Without having consummated the marriage with him, she ran away from him and was not recaptured. Where did she go? Did her parents become more reasonable and welcome Anna once more into their house? Whatever the case, she took charge of her own destiny—*mancipavit* is the word from Roman law used for this action. She did not under any circumstances want to return to the husband chosen for her by her mother and father. Rather, she married a Simon Schrottyr from the bishopric of Merseburg, consummated the marriage with him, and had children. Only many years after the “forced marriage” did she plead for confirmation to be able to remain with Simon, since the first marriage had come about *vi et metu* and thus was null and void. In the final analysis, the official of the bishop of Merseburg had to reach a decision on the matter, but, in view of the clear legal position, a judgment in brave Anna’s favor could not be doubted.

Nikolaus Schuster, latinized to Calciator, and Fides, daughter of a family by the name of Glanvelder in the bishopric of Strasburg, had secretly contracted and consummated a marriage, “which they did not dare report to their parents,” as the supplication states.²⁰² A short time later, Fides’s parents, who suspected nothing about the clandestinely contracted marriage of their daughter or made light of it, engaged her to Jakob Obrethenselen, also from the diocese of Strasburg. The text from the penitentiary does not reveal when this forced marriage was consummated; it only says that Fides bore children. Who was the father of the offspring? Apparently Nikolaus, not Jakob. In order to ward off the imminent and, indeed, well-founded suspicion that he was the father and not the evidently already much older Jakob, Nikolaus became the children’s godfather. Then, as Nikolaus and Fides claimed in the penitentiary, Jakob died, Nikolaus moved in with

201. RPG 6.3683.

202. RPG 2.943.

his wife, and she became pregnant again. In 1452, both asked to be able to remain in their clandestinely contracted (and thus valid, albeit unlawful) marriage after the necessary absolution from automatic excommunication, and they sought the legitimization of their children, which the penitentiary approved for them, as was routine. As unclear as these facts seemed to be, the penitentiary did not have to make a decision about the validity of the first or the second marriage, for, after Jakob's death, the situation was abundantly clear: their marriage existed again, after they had been granted absolution and dispensation.

The following love-drama had an additional complication from the fact that the young Romeo was forced by his parents to enter the spiritual life.²⁰³ The drama began according to the classic model: Nikolaus Schacher and Dorothea from the diocese of Würzburg had met and fallen in love when she was still a young girl. Without their parents' knowledge, they pledged marriage *per verba de praesenti* and went to bed with each other. They had thus contracted a clandestine but, because of the consummation, valid marriage. Their union was nevertheless one of social unequals. While Dorothea, it seems, had grown up in poor circumstances, Nikolaus evidently came from a well-off house. When his parents found out about the matter, they objected above all else to Dorothea's low birth. They intended to make an end to the undesired relationship by convincing their son to enter into the spiritual state. In order to ensure his parents' goodwill toward him, Nikolaus gave in and had himself consecrated a subdeacon, without telling Dorothea about it. As such, he would have been obliged to live celibately. He soon regretted, however, having to give up his wife, especially since he had been enlightened on the fact that a marriage did not permit the reception of higher orders. For this reason, he made his way to the papal well of grace, laid his story before the pope, and asked for the declaration that, regardless of his later consecration as a subdeacon, his marriage to Dorothea was valid and he could fulfill his marital duties. At the same time, he also wanted to be freed from the obligation to carry out hourly prayers.

203. RPG 6.3692.

In theory, the penitentiary could have entitled him to his marriage as well as his status as subdeacon under the condition that he could not have intercourse with Dorothea. Instead, the major penitentiary ordered that, if the ordinary of Würzburg found Nikolaus's claims to be true, he should permit the marriage with Dorothea and declare, as usual, their children as legitimate. Perhaps this was important to the couple above all because in many cases parents enacted revenge on their children who behaved like Romeo and Juliet by excluding them from the family inheritance. The legitimization of the grandchildren raised the possibility that they would be given a share in the family's assets despite the verdict of the grandparents. The official of Würzburg most likely declared the consecration to the subdiaconate invalid or "laicized" Nikolaus.

Another Romeo-and-Juliet-case from the bishopric of Speyer appropriately forms the close of this section. Dorothea, the daughter of Johannes Nuart from Haselbach, who had secretly married a Nikolaus Sturm against her parents' wishes, had to pass through every level of ecclesiastical jurisdiction before her union with the boyfriend of her youth was legalized in 1482.²⁰⁴ The parents evidently knew nothing of the clandestine union, because they arranged another marriage for their daughter. According to the words in her supplication, Dorothea had married Nikolaus Waltmann out of fear of them. She also consummated the marriage with him. The official of the cathedral provost of Speyer, Johannes Stoll, under whose jurisdiction the two stood, summoned the couple. The text does not say who had taken the initiative for this summons. Perhaps Nikolaus Sturm and Dorothea hoped that taking this step would lead to a recognition of their earlier and, as they thought, legitimately contracted marriage. This hope was bitterly disappointed. The official came to the definitive judgment that Dorothea's second marriage, the one to Nikolaus Waltmann, was the valid one. Dorothea made an appeal to the episcopal official. It was her bad luck that Johannes Stoll had in the meantime become official of the bishop of Speyer. Since he was familiar with the case, it is no wonder that he came once more

204. RPG 6.3750.

to the same decision. Dorothea and Nikolaus Sturm were again the losers before a spiritual court, but they did not give up and brought their request to the next court of instance, to the archiepiscopal curia in Mainz. Since, however, time was of the essence, for the official of Speyer had arranged for his decision to take effect, and that meant that Dorothea was finally to be given over to Nikolaus Waltramm as his wife, they also directed a supplication to Pope Sixtus IV. They wanted him to certify that Dorothea and Nikolaus Sturm were lawfully married. According to curial practice in requests for a *littera declaratoria*, the entire dossier went back again to the ordinary, thus the bishop of Speyer. Did its official, Johannes Stoll, now decide differently based on the recommendation of the penitentiary? Or did a renewed refusal mean the end of the relationship with Nikolaus Sturm?

Jealousy and Spousal Homicide

It was also not rare in the late Middle Ages for marital disputes and chaos to lead to violent arguments. Women were not the only ones to suffer from such violence. They suffered when men, which only too frequently occurred, beat their family members on a regular basis and corporally punished them in other ways, but founded or unfounded jealousy could also quickly lead to a wife drawing a knife or bringing poison, the weapon of choice for women, into action in order to punish or get rid of an unfaithful marriage partner. And so we also find the most gruesome of stories in the penitentiary register.

Dorothea from Salzburg had made herself a widow by serving her apparently less than loved husband a cup of poisoned drink.²⁰⁵ Without having been brought to account before a secular court and without obtaining at least an ecclesiastical absolution, she later got married again. In early 1487, she subsequently asked for absolution in Rome and permission to be able to remain married since she had entered into a second marriage despite the canonical prohibition of doing so. The official of Salzburg had probably summoned her to court,

205. RPG 7.1807.

if one supposes that her own conscience had not tormented her. Margarita Wagner from Mengen had also sent her husband on his way to glory with poison; she suspected him of adultery.²⁰⁶ She had to appear before the spiritual court for that. The vicar did absolve her of the offense of spousal homicide (for which, it seems, Margarita had also come out with her life before the secular judge) with the condition that she could never marry again. Margarita did not honor this prohibition but got married again and bore children for her second husband, who allegedly had no idea of her crime. According to canon law he would in no way have been able to marry someone who had murdered her spouse; for this reason Margarita pleaded her second husband's ignorance. She was probably charged once more on this account before the officialate court and condemned to separate from her second husband. She wrote to the pope in July 1478, who tempered justice with mercy, absolved Margarita through the penitentiary, legitimized her children, and permitted her to continue in her second marriage in spite of the episcopal prohibition to the contrary. The bishop of Constance had decided in absolute conformity with the law, for canon law in general did not permit one to marry again after murdering a spouse.²⁰⁷ On the rubric of the decretal of Pope Celestine III, the great canonist Huguccio (1140–1210) added, "This is a fine and ordinary case."²⁰⁸

Even if perhaps not a daily occurrence, spousal homicide (*uxoricidium* or *mariticideum*) appeared by no means rarely in the penitentiary supplications. Leonard Smyt from Ennstal near Salzburg had with God's help barely escaped an attempted murder by his better half, Margarete. Margarete afterward fled and "wandered adulterously through the world as a vagabond," or so Leonard claimed to the penitentiary.²⁰⁹ One fine day, she returned to him. Because of the danger to life and limb, Leonard had no desire to take up married life with her again. Rome approved of this, so long as the ordinary con-

206. RPG 6.2860.

207. X 3.33.1: "Non potest quis illam habere in uxorem, cuius maritum occidit machinatione ipsius mulieris."

208. "Et est pulcher et quotidianus casus."

209. RPG 6.3467 (year 1472).

firmed that Margarete was a notorious adulterer but that the husband had not conducted himself in similar adulterous fashion. To his distress, Johannes from the city of Bozen had also married an evil woman, Sandrina Petri from the bishopric of Brixen. The two did not find any happiness in marriage.²¹⁰ To top it all off, he must have soon discovered that Sandrina had gotten sexually involved with another man two months before their wedding, for she bore healthy twins a half year after it. Johannes could hardly be the twins' father. After that, Sandrina had even tried to poison him. He asked the pope for a separation from table and bed. The regent deemed that the bishop in charge should decide the sad affair in accord with canon law. He would in fact, then, have decreed the separation.

As a rule, according to the medieval code of honor, men seem to have reacted differently from this Johannes from South Tirol—in essence more robustly—to actual or imagined flings by their wives. For the most part they were uneasy about a “divorce.” Johannes Richlins from the diocese of Constance did not harbor the slightest doubt about the wayward behavior of his wife. He even knew her lover, his neighbor Johannes Rot.²¹¹ One day, when he caught Johannes “in bed with his wife,” he made short work of the situation and killed both of them on the spot. He got off with his life before the secular court, for in 1494 he asked the pope for absolution and for the grace to be able to get married once more, which contravened the already cited canonical prescriptions, which forbade someone who had murdered his spouse from ever marrying again. The penitentiary believed his reasoning, that he was still so young and could not live continently without danger to his soul, and permitted him to marry again.

Two other wife-murderers, Lazarus Georgii from Laibach and Georg Rechlin from Augsburg, asked for pardon and for authorization to marry a second time in the same year, 1494; they employed the same reasoning, namely, that they were too young for a continent life.²¹² The Roman well of grace also showed itself lenient to

210. RPG 7.2426 (year 1492).

211. ASV PA 43 fol. 230r.

212. ASV PA 43 fols. 218v–219r and PA 43 fol. 249v.

them. Unfortunately, in his request to be permitted a new marriage, a certain Orlandus Spanier from the bishopric of Trent did not say whether he had killed his wife out of jealousy.²¹³ Johannes Schultzei from Magdeburg did not wait on a papal dispensation after he had killed his wife "at the instigation of the devil." Instead, he immediately married another woman.²¹⁴ The supplication in 1474 from Petrus Weber from Salzburg spoke of a case of manslaughter, not homicide, within a delicate *pas de trois*.²¹⁵ Petrus and Anna were carrying on a perpetual, adulterous relationship when, one day, Petrus and Wolfgang, Anna's cuckolded husband, got into a dispute over a common vineyard. In the course of an argument that progressed from words to violence, Petrus dealt Wolfgang such a blow that he died. He and his lover were consequently put in prison, where they promised to marry each other. They apparently soon got free and asked the pope for pardon. Petrus needed absolution from adultery and manslaughter, Anna only from adultery. Even in this case, the regent did not refuse the requested pardon and, as usual, granted the legitimization of their apparently already numerous children together.

Johannes Knotzinger from the diocese of Salzburg needed a papal dispensation because he had clandestinely married Margareta from the bishopric of Brixen, and she had killed her former husband, Paul Nertz.²¹⁶ Since Johannes had not been involved in the murder and also had not carried out an affair with Margarete during her husband's lifetime, she asked the pope for absolution from spousal homicide, and they both asked him for absolution from excommunication due to the clandestine contracting of their marriage as well as dispensation to remain married in the future and, of course, for the legitimization of their children, which was almost automatic in every supplication. The priest Conrad from Wollerau on Lake Zurich in the diocese of Constance testified that an adulterous woman lived at risk. "The victim of human frailty," he had at some point repeatedly had sexual relations with Dorothea, a married woman and, in addition, his parishioner. Ulrich, Dorothea's husband, found them out

213. RPG 5.1627 (year 1469).

215. RPG 6.512.

214. RPG 5.1811 (year 1470).

216. RPG 7.1999.

and called his wife to account, “for she had sinned against marital fidelity.” She contradicted him, denied everything, and showed herself to be rebellious. At this point, Ulrich did not go after her lover but instead beat his wife so badly that she died soon afterward. With good reason, Konrad the priest felt himself in a certain way co-responsible for her death. His parish started talking about the incident, and he thus asked the penitentiary for a declaration that he had not incurred any disqualification or irregularity and could, therefore, practice his office of the care of souls and maintain his prebend. The bishop of Constance was to make the decision in the case, as the regent decided.

Wedding Bells with a Prostitute

Since the church’s morals placed every instance of extramarital sexual relations under punishment and condemned it as *fornicatio*, virginity held a correspondingly high position of worth. In sermons, men heard that their future wife would have to enter marriage pure and unblemished. Nevertheless, the oldest profession of the world could not be rooted out, even in the cities of Christendom, and it flourished, oftentimes under strict controls of the municipal authorities. Prostitutes committed officially authorized *fornicatio*, so to speak, with no interruption of their services of love for sale. Could they get married? Could someone take them as wives? Gratian had referred without specification to “many authorities and reasons” and had determined that a man could not enter into a valid marriage with a prostitute.²¹⁷ But whoever erroneously married a prostitute (that is, a *corrupta*), thinking her to be a virgin, could not let her go, even after her past had become known to him.²¹⁸ In his final *dictum*, the *magister* also stressed that it could be a good deed to marry a prostitute in order to free her from her sinful profession.²¹⁹ The decretists built on this doctrine further, buttressed by a decretal of Pope Clement III

217. C.32 q.1 d.a.c.1; C.32 q.1 d.p.c.10 and d.p.c.13.

218. C.29 q.1 d. unicus §5: “Qui ducit meretricem in uxorem vel corruptam, quam putat esse castam vel virginem, non potest eam dimittere et aliam ducere.”

219. C.32 q.1 c.14, rubric: “non est peccatum meretricem ducere in uxorem.”

from the year 1198, who had decreed that a marriage with a prostitute who was prepared to give up her profession would be classified as an act of great merit.²²⁰ One might think that these theological-juristic arguments were points of pure academic subtlety by scholars in their ivory towers who were strangers to the world. As the Roman supplication register reveals, that is in no way the case.

Georg de Burge from the bishopric of Freising had applied to the curia as a suppliant in the year 1456 with a story ripe for today's tabloids.²²¹ At the time of his supplication, he was staying in Padua, probably because he was studying there or was active as a craftsman. Prostitution thrived in every university town. In a brothel in Padua, Georg had come across Elisabeth, who worked there, snatched her out of the establishment, *pietate motus*, as he put it, and married the woman. After the wedding, Georg found out from his brother, who also lived in Padua, that as a faithful customer he had on many occasions visited Elisabeth. As a result, an *affinitas superveniens* existed between Georg and Elisabeth according to canon law. The supplication seems to have met with especial interest in Rome, for Georg's request came before Pope Calixtus III personally. Only rarely did he interfere in the daily business of the penitentiary, and he usually handed over all decisions in this office to the tried-and-true Cardinal Capranica. Thus, it was contrary to his usual custom when he signed this supplication with his own hand and instructed that it be expedited through the penitentiary. The penitentiary commissioned the bishop of Padua to grant dispensation to Georg, since the story of the two brothers with Elisabeth was not publicly known, so that he could continue in his marriage with the former prostitute.

A supplication from 1470 aimed in the same direction. Andreas Haye had married Margareta Fry, who until her wedding had been active in a brothel and had "admitted countless men [to sexual intercourse]" as a *publica meretrix*. Where she worked is unfortunately not said; a brothel existed in every larger city in the bishopric of Constance. Since it was not out of the question for the couple but rather, as we will immediately see, held for certain that Andreas's relatives

220. X 4.1.20: "in remissionem proficiat peccatorum."

221. RPG 3.252.

or sons also counted among Margareta's customers, they pleaded at the penitentiary for a *littera declaratoria*. The background to these proceedings is hinted at in the supplication: two sons of the apparently widowed and already aged, but still quite chipper Andreas had contested their father's marriage to Margareta because they feared she would cut into their inheritance. Both sons were conscious of the fact that they had been earlier clients of Margareta, for which reason the marriage of the *meretrix* to their father should have been prohibited. How did Rome handle itself in this matter? The auditor of the penitentiary decided to refer the case back to the official in Constance and reached a decision according to the law in force. Without a doubt, considering how the situation played out, the sons' father's marriage had unpleasant material consequences for the two young men, for the official of Constance certainly regarded the marriage as valid. The spiritual judge on Lake Constance could hardly have recognized an *affinitas superveniens* with Margareta Fry as grounds for annulment.²²²

Proof of a visit to the brothel was not easy to furnish in individual cases. For good or ill, the church tolerated the women selling their bodies, the municipal authorities sought to keep their conduct under control, but their customers were not registered, and a visit to a brothel was not in any respect on the record. All the same, the *meretrices* presented a lasting danger to the marriage market, not least because the social controls in the reasonably small cities of the late Middle Ages functioned much more narrowly than in an anonymous big city of today. Arnold Swarte and Gertrud Brygge from Münster had such an experience, which posed a threat to their marriage in 1499. Two years before, they had married after the public bans of marriage and had lived together in marriage since that time. Then a prostitute, who in addition was a sister of Gertrud's father, who also seems to have been her customer, conjured up a plan and maliciously claimed (with the intention to break them up, as the petitioners wrote in their supplication) that she had had intercourse with Arnold twice. In this way the impediment of an *affinitas superveniens*

222. RPG 5.2160 (year 1470).

naturally would have arisen. Interestingly, the husband did not simply deny the lady of the night's claim; instead, he argued in the supplication that the ground for a marital impediment brought forward by the prostitute could not be proven publicly since he was not a notorious frequenter of brothels and his stay there was not confirmed by witnesses. Prostitution counted as a dishonorable profession and no credence was given to the claims of mere prostitutes; they were rarely admitted to oaths. The penitentiary also seems to have subscribed to this principle, for the regent complied with the couple's request. Their marriage could be acknowledged as valid, without further conditions, requirements, or a referral back to Constance.²²³

The Nobility at the Well of Grace

The canonical prescriptions for a divorce were in effect everywhere in Christendom and for members of every status, even for the nobility. Even though many families of the high nobility of the empire had special relationships with the apostolic see, and some even employed their own proctors for the settlements of their feudal interests or requests for pardon in Rome, we find comparatively few supplications in the penitentiary's register in which families of the nobility and the high nobility applied for dispensation in the affairs of their marriages. It would be well worth comparing the numerous marital dispensations of noble houses in the camera and the chancery with those in the penitentiary. This task cannot be tackled in the context of the present investigation. I will give but one example: on April 27, 1465, Wilhelm the Older, Duke of Braunschweig and Lüneburg, and Mechtild, the widow of the deceased Duke Bernhard von Braunschweig and Lüneburg, obtained dispensation from the papal chancery because Wilhelm and Bernhard were related by blood in the third degree.²²⁴ The penitentiary had not attended to their request but did grant them a personal confessor-priest in the year 1469.²²⁵ Only the requests for pardon from noble *petentes* that

223. ASV PA 47 fol. 290r.

224. RG 9.6141; ASV Reg. Lat. 614 fols. 161r–162r.

225. RPG 5.4492.

were approved by the papal office of penance, confession, and pardon will be investigated here.

Only 110 supplications from noble families were entered in our register. One should, however, take into account that many petitioners of the middle or lower nobility did not always state their social standing, in order to avoid being sentenced to a high *compositio* payment. The requests that can be proven to come from blue-blooded supplicants are spread out, without major deviations, evenly across the area of the German empire. Their number rises slightly from two per year around 1460 to four per year at the end of our period of investigation. Requests for dispensation submitted before a marriage rose in the course of the roughly fifty years we are examining. While the requests for the granting of a pardon subsequent to marriage predominated among the few requests of the time of Calixtus III and Pius II, in the majority of cases the nobles submitted their requests before marriage, or at least prior to the consummation of the marriage, under the pontificates that followed. Advance planning is to be expected in these families, who pursued a marriage strategy oriented toward the preservation of their estate, more than bourgeois and peasant families. One can also determine that marital ethics were in no way better in noble circles than among non-noble Christians. Adulterous relationships are also recorded at court, as in the case of Count Generosus from the line of imperial counts from Leiningen-Rixingen, who had to apply for dispensation from incest and adultery in Rome in 1484 because he had carried on a concubinage with Mathea von Monscheit while she was still married and because he had publicly married Mathea without permission after the death of her first husband.²²⁶

Which noble families turned to the penitentiary? The supplication of the Swabian Eberhard von Württemberg from 1466 has already been mentioned. His brother Ulrich had gotten dispensation in the chancery in 1459 and from legate Cardinal Bessarion in 1460 for his marriage to Margarete von Savoyen.²²⁷ I have not been able to fit the other marriages or marriage agreements named in the supplica-

226. RPG 7.588 and 5.599.

227. RG 8.5700 and HStA Stuttgart A 602 Nr. 246.

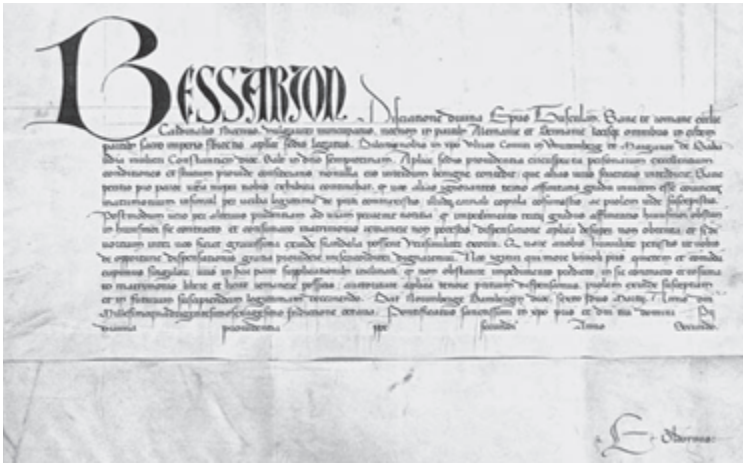


Figure 11. Dispensation of the papal legate, Cardinal Bessarion, for Ulrich von Württemberg and Margarete von Savoyen for a marriage unknowingly contracted in the third degree of relations, Nurnberg, March 10, 1460. HStA Stuttgart.

tions in detail into family genealogies and to verify them from other sources. Even without that, however, I can cite several additional examples of supplications from known families of the German nobility during the long pontificate of Pope Sixtus IV (1471–84), among which a great number come to our attention in 1480:

Magnus, Duke of Wielkopolska (*lat.* Polonia Maior), and Sophia, duchess of Stettin, who was previously engaged to Johannes, Magnus's brother.²²⁸

Johannes, Duke of Bavaria, Count Palatine of the Rhine, and Count of Sponheim, and Johanna, daughter of the deceased Count Johannes of Nassau and Saarbrücken.²²⁹

Judocus, Count of Hoya, and Anna, daughter of Duke Wilhelm the Younger of Braunschweig.²³⁰

Rudolph, *domicellus* from the family of the Count of Nassau, and Margarita, *domicella* from the family of the Count of Hanau.²³¹

228. RPG 6.1117 (year 1478).

230. RPG 6.1220 (year 1479).

229. RPG 6.1346 (year 1479).

231. RPG 6.1408 (year 1480).

Philipp, *domicellus* from the family of the Count of Nassau, and Anna, Countess of Büdingen.²³²

Philipp, Count of Virneburg and Neuenahr, Lord of Saffenberg in the bishopric of Trier, and Walpurgis, Countess at Solms.²³³

Johannes from the family of the Count of Nassau, Lord of Kylsten in the bishopric of Trier, and Maria from the family of the Count at Solms.²³⁴

Wilhelm the Elder, Landgrave of Hesse, and Anna, Duchess of Braunschweig.²³⁵

Ernst, Count of Mansfeld, and Margarita, daughter of Count Gebhard of Mansfeld.²³⁶

Eberhard, Count of Sonneberg, and Anna, Countess of Fürstenberg.²³⁷

Sigismund, Archduke of Austria, and Katherina, daughter of Duke Albert of Saxony.²³⁸

Johannes, Count of Monasco (?), and Adelheid von Monfort.²³⁹

Judocus, Count of Hoya, and Ennegardis, noblewoman of Lippe.²⁴⁰

The names of the noble men and women, their titles as well as the seat of their dominion, appear here as they are written in the supplications. I did not take up the task of checking them against genealogical tables. In none of the above-mentioned supplications from the nobility of the empire is there so much as a word about the material side of the marriage contracts. Money makes no appearance here, even though we know that it played a central role in the arranged marriages of the noble class. Thousands of florins were often in play as costs for a dowry. Only a single supplication, from the year 1490, serves as an exception. It dealt with a marital agreement, later not realized, between two families of the well-off patriciate of Cologne.²⁴¹ This case involved a large sum of money, which was abundantly present in the rich atmosphere of Cologne and among

232. RPG 6.1418 (February 1480); duplicate in RPG 6.1435 (April 1480).

233. RPG 6.1419 (year 1480).

234. RPG 6.1420 (year 1480).

235. RPG 6.1430 (year 1480).

236. RPG 6.1526 (year 1480).

237. RPG 6.1649 (year 1480).

238. RPG 6.1860 (year 1483).

239. RPG 6.1871 (year 1483).

240. RPG 6.1949 (year 1484).

241. RPG 7.2601.

its long-distance merchants. Dietrich von Borsthorst the Younger, noble layman from the diocese of Cologne, and Ariane Chiffardi, likewise from the cathedral city, were the protagonists. Their fathers had at one time drafted a written marriage contract, according to which Ariane was to receive the sum of 7,500 Rhenish florins as her marriage portion. When her father did not find himself capable of producing the high sum, the contract was revoked. The young man tried, perhaps because he very much wanted to marry Ariane, to make the deal at a lower price and to be paid in installments. Dietrich was prepared to acquiesce to yearly payments of 300 florins, up to a sum of 4,000 florins, and afterwards a yearly payment of 60 florins until 1,000 florins was reached, as the dowry and then to marry Ariane. The payments, though promised, did not come in, so the pope dissolved the engagement between the two.

The Convergence of Secular and Ecclesiastical Courts

Notwithstanding Martin Luther's claim that marriage was a worldly thing, the Roman church held fast, with an iron grip and against all aspirations of secular judicial courts, to its monopoly on adjudication in matters of marriage. When in 1457 the court of lay assessors in Aachen had summoned the citizen Alardus von Linczenich at the proposal of Gertrud, the daughter of Christian von Hergenrade, because of a pledge of marriage given to her, Alardus protested to the pope. Pope Calixtus III commissioned the cantor of the Marienkirche in Aachen to deal with the case himself regardless of the judgment made by the twelve lay assessors, which had ended up fully in Gertrud's favor.²⁴² In the "imperial city" of Augsburg, the council and lay assessors were better informed about the legal situation and turned to the papal chancery with the request that the citizen Johannes from the merchant family Welser not be issued a marital dispensation on account of *consanguinitas*. Johannes had provoked a scandal in 1457 when he kidnapped Ursula Morlerin, who apparently was an orphan under municipal care, raped her, and made her

242. RG 7.27 and 179.

his lover. This deed had caused quite a sensation and found its way into the city's chronicle.²⁴³

In many cases, secular courts did not proceed any less sharply in their pursuit of claims of "abandoned" women than the ecclesiastical officialate court, especially when there was evidence of a long-lasting relationship (*fornicatio*), namely, children. Whereas it was not easy for a seduced woman to prove a marriage pledge *per verba de praesenti* before the ecclesiastical marriage court, municipal judges decided on the basis of biological evidence. They might not be able to make a decision on the matter, but, through forced detention, they could make sure that the men at least made a pledge of marriage at that time and were dragged before the spiritual court. The different practices of the two legal spheres become very clear in the long supplication of one Johannes Purschnider.²⁴⁴ He had seduced and impregnated Angela Renczin from the town of Nürtingen in Württemberg, where Count Eberhard the Younger had his residence. She afterwards sued him on account of an, as he expressed it in his supplication, "alleged pledge of marriage," for which reason he was thrown into prison in Nürtingen. He had to swear that he would surrender to Angela and her proctor's demands before the court of the bishop of Constance to have the suit decided there. In the meantime the woman gave birth to a child. The priest of the Church of St. Lawrence in Nürtingen refused to baptize the babe *nisi ad honores esset*, which in English means something like "until the two had entered into a proper marriage." He also put pressure on Johannes to legalize his relationship with Angela. So that the child could be baptized, Johannes made assurances that he would marry its mother. The official of Constance decided then in Angela's favor; he assigned Johannes as her husband. In the meantime, however, Johannes had taken off.

Later, in his supplication, Johannes claimed to have known nothing of the "overbearing judgment" several years back. Meanwhile, he had married an Angela Teschlerin from Urach. It does not sound very convincing that in Urach, at the time the city of residence of Count Eberhard the Bearded, he supposedly had not found out any-

243. RG 7.196, see below, chapter 4, n.141.

244. RPG 6.3756 (year 1482).

thing about the decision of the official of Constance against him. Johannes and his second Angela had lived together in marriage for many years and had had nine children when Angela Renczin took up legal proceedings against him again “for cohabitation” based on the judgment of the official of Constance, which had gone in her favor. Johannes countered that, “on the basis of a rescript obtained from Rome, the decision about the judgment that had been negative for him had been delivered to another judge *in partibus*.” As to where this judge had his seat, the petitioner did not say, but there was actually only one possibility according to canonical procedural law: Mainz. He had to concede, however, that he had not delivered to this court any evidence for his claim that he never contracted a marriage with Angela Renczin, for the legal process had dragged on, and his legal representatives were now deceased. He thus asked Pope Sixtus IV for the usual declaration through which he and Angela Teschlerin would be certified as being joined in a legally valid marriage. The signature of the penitentiary’s regent and the *consilium* of the auditor, Giovanni de Ceretanis, left it to the ordinary of Constance to check over the case again and, if the facts permitted it, to decide for Purschnider. Once again, the records of the continuation of this process are missing, but Johannes could hardly have obtained a decision in his favor.

The supplications of the penitentiary also show that, as a rule, it was women who troubled the officialate courts. The layman Georg Gaigner from the Salzburg countryside kept a Kunigunde Haseldaterin as a “maid and servant, but also as a concubine.”²⁴⁵ Kunigunde apparently saw in her activity as a maid and bedfellow of Georg hardly any difference from the life of other, duly married wives in her neighborhood. It cannot be surprising that she, according to the words of Georg’s supplication, “boldly and shamelessly everywhere daily belted out that she was Georg’s wife.” Georg, who considered himself still unmarried, felt impaired in his capacity to find a wife; indeed, Kunigunde “hindered him [with her talk] from entering into a marriage with another woman,” as he complained in his supplica-

245. RPG 6.3682 (year 1479).

tion. He admitted that Kunigunde shared his bed as his concubine, but he asserted that he had never “had the intention to take her as his wife, and he also did not want that.” His request to the pope thus aimed for a declaration that he could marry another. The papal pardon office referred the proposal back to Salzburg with the requirement that the local court clarify whether Georg had given a (provable) pledge of marriage to Kunigunde. That might have been as difficult for her to produce as for women in similar situations in many other processes.

Johannes Herdegen, who lived in the diocese of Würzburg, also had such a process brought against him.²⁴⁶ His “bride,” Margareta, had been turned away from the officialate court as a plaintiff since she evidently could not prove that Johannes had formally and correctly contracted a marriage with her, although he certainly had had sexual relations with her. After the judicial acquittal, the *sententia absolutoria*, the man thought he could breathe a sigh of relief. But he was wrong, for Margareta’s relatives showed up at his house with weapons, took him captive, and had him incarcerated. That was completely legitimate, for, if their relationship really had come to the point of them sleeping together, Margareta was in a position to make heavy demands of Johannes. In any case, that is what her family members claimed, and they added that he had “robbed her of the flower of her innocence,” and secular as well as ecclesiastical courts condemned men to a compensatory payment, the *Kranzgeld*, for that.

Johannes could get released from jail only by swearing and then offering surety that he would marry Margareta, live in a lawful marriage with her, and not proceed judicially against the relatives who had brought him to jail. This all happened under force and the fear of death, he later argued to the pope. He had to offer six sureties, which were supposed to ensure that he would be brought back to prison if he did not keep to his pledges. Johannes had no escape, so he submitted to his fate, took Margareta into his house, and lived with her for a while, but without sleeping with her again. By that—namely, by the *copula carnalis* after the marriage pledge before wit-

246. RPG 4.1794 (year 1461).

nesses—their relationship would have become a fully valid, canonically unobjectionable marriage. Johannes knew that and for that reason avoided any sexual contact with his former lover. Margareta reached her limit and left the house, but we do not know where she went and what she did. After more than five years of separation, Johannes submitted his supplication. He asked for a papal *littera* that would certify for him and the sureties for which he was still liable that a marriage had never come to pass between him and Margarete and that he could get married to another. The penitentiary proceeded according to routine; his supplication was delivered to the officialate court for investigation with the requirement to check Johannes's claims in a canonical process and make a decision in accord with the valid statute law of the territory and canonical prescriptions. In this case as well, we do not know the judicial procedure's outcome.

Another process to be mentioned here got its start before the officialate court in Mainz. Johannes tzo der Lorsen had been cited by Elizabeth de Domo because he had promised to marry her. The judge returned a verdict in Elizabeth's favor and awarded Johannes to her. Johannes appealed to the penitentiary on the claim of a procedural error. The judge had been informed only by Elizabeth's party and had not interrogated him or his proctor; he had even excommunicated Johannes (probably for contumacy). The major penitentiary accepted the appeal and absolved Johannes, but he referred the case back to the episcopal court. Since the officialate acts for this case from the year 1452 no longer exist in Mainz, we do not know how the matter of Johannes v. Elizabeth went. That is also the case for a procedure of Johannes Thome from 1468, a layman from Nürtingen in the bishopric of Constance.²⁴⁷ After he had slept *actu fornicario* with a certain Agnes several times, she became pregnant. Johannes did not have a mind to marry her. He wanted instead to enter into a marriage with another woman and thus had the banns of marriage announced, presumably by the priest of the Church of St. Lawrence in the city. When his intention thereby became known, Agnes went before the city council (*advocatus et communitas*, the supplication says)

247. RPG 5.1601.

and sued for her rights against Johannes. The council decided in her favor, for he was locked up and then released only when he had taken an oath to surrender to the official court and not appeal its decision. Since he feared that he had no good cards to play against Agnes before this ecclesiastical court and would surely, after the birth of a child, be condemned at least to alimony payments, he had himself freed from the oath by the penitentiary. Whether he thereby also became free of his obligation toward Agnes is however doubtful; in any case, he would have paid.

In another marriage story from Mainz, the seduced woman, Adelheid Veyduldén, had turned not just to the official but also, like the just-named Agnes, to the municipal court.²⁴⁸ Convinced by the evidence laid out by the woman, that court had the accused, Ludovicus Currificis (as the proctor elegantly latinized the name Lotze Wagener), immediately taken into custody. After a few days, Lotze was led together with Adelheid before the bridal gate of a church in Mainz so that he could conclude the marriage contract with her there with the usual *verba de praesenti*. For a while, he steadfastly refused, until those standing around the judge made him understand that they would then hang him straightaway. That might have been an exaggeration; that kind of justice by lynching was no longer thinkable in the somewhat legally ordered context of a medieval city in the middle of the fifteenth century. By that claim, Lotze only meant to express the unavoidable compulsion under which he agreed to the marriage contract. As soon as he was free again, he made off as quickly as possible. His supplication to Pope Pius II ended with the request for confirmation that he did not have to remain in this marriage (*matrimonium pretentum*) thrust on him *vi et metu*. Although Lotze had availed himself in Rome of the help of an experienced proctor (his supplication was drafted by Christian Geroldi, an intimate acquaintance of the major penitentiary, Cardinal Capranica),²⁴⁹ when he signed the supplication, the major penitentiary did not agree to it forthwith and automatically speak a judgment that would have been positive for Lotze. Instead he sent his dossier back

248. RPG 4.110 (year 1459).

249. On Geroldi, RG 8.827.

to Mainz, instructing the episcopal court to proceed in accord with canon law.

Wolfgang Paud from Haidzell in the bishopric of Augsburg also showed how one could legally “run away” from a union that had become burdensome, similarly to how the above-named Johannes Purschnider did so.²⁵⁰ Elisabeth Schuster, also from Haidzell, had dragged him before the official court of Augsburg because of a marriage pledge. With a definitive judgment, the judges acquitted him from the claims raised against him by the woman that Wolfgang was her legitimate husband. The judgment was handed over to him substantiated in written form. Elisabeth did not consider giving up her claim on this account. She brought suit against Wolfgang a second time and supplied new evidence for the marriage pledge that had been given. Once again summoned by the official of Augsburg, as prescribed in procedural law, he disputed Elisabeth’s claim all over again. Before a judgment came about in this second process, he left the territory of the bishopric. The official nevertheless continued the process and determined that Elisabeth was his legitimate wife, but this only on account of contumacy, without having legitimate evidence for a marital union between them, as Wolfgang later claimed. For his part, Wolfgang refused to accept that, for he had in the meantime gotten married in good ecclesiastical fashion “abroad,” where he now lived. He claimed, without making any more specific statements, to have made an appeal against the judgment through proctors—the only possibilities would have been the archiepiscopal see or the Roman curia. There is no trace of an appeal to Mainz in the sources.

In lieu of that, we have access to Wolfgang’s request to the pope. He started from the beginning and told the entire story summarized here in a supplication. Since he had never uttered any words whatsoever to Elisabeth that could be interpreted as a pledge of marriage, he proposed that a *littera declaratoria* should confirm that a marital bond had never existed between him and Elisabeth and that he could continue in the marriage he had contracted later. The *petens*

250. RPG 6.3684 (year 1479).

was aware that the penitentiary could deliver his request over to his ordinary, the bishop of Augsburg, with the requirement of investigating the situation again. But Elisabeth had already once before received a judgment in her favor from the officialate court there. How could he prevent a repeat of that decision? Through the *recusatio iudicis*, the procedure verified in Roman as well as canon law of declaring the judge as biased. Wolfgang's juristic advisor of course knew this maneuver and consequently proposed to the penitentiary that his case should not be handed over to his ordinary, the bishop of Augsburg, whom the proctor claimed "to be suspect to him," but rather to the bishop of Freising. This bishop stood not under the archbishop of Mainz but rather under the archbishop of Salzburg, and in this way the path was opened for Wolfgang to become freed from Elisabeth's claims. Whether he had success cannot be determined, because of the lack of relevant sources at present.

Officialate processes in which a man went before the court in order to have a woman awarded him as his wife are rarely mentioned in the penitentiary supplications. A few examples may suffice in order to show that it nevertheless did occur. Early in 1470, Johannes Schmid brought a process against Anna Kutterin before the officialate court in Augsburg.²⁵¹ He wanted confirmation from the official that Anna was his legitimate wife; nevertheless, he could not produce sufficient evidence, so the judge acquitted Anna. She later made a marriage agreement *per verba de praesenti* with Petrus Geschwend and had the marriage publicly announced through the banns. The couple did not, however, consummate their marriage. A problem resulted from this second union for Anna, for Petrus was related by blood to Johannes in the third degree. Consequently, several people, and indeed especially Johannes, took the view that Anna could not enter into this marriage because of the impediment of public decorum. For this reason, Anna requested a *littera declaratoria* from the penitentiary that would also concede to her, since the official in Augsburg had indeed confirmed it for her, that a marriage had never at any point existed between her and Johannes. Unfortu-

251. RPG 5.2148.

nately our knowledge ends here, for the Augsburg sources for this dispute do not exist. One can thus only speculate that, for both men to have courted her, Anna was perhaps a good catch.

In the processes before the officialate courts that have to do with confirming the existence of marriages, men come out looking good only in the rarest of cases. Most of them tried to escape the consequences of seducing and sleeping with a woman with every juristic trick and ruse in the book; hardly a trace of social responsibility can be found for their behavior. As we have seen, the municipal jurisdiction came to the aid of the abandoned woman who had been deceived about marriage, especially when children had sprung from the affair. Secular courts could not make any definitive judgments in marital disputes; this was reserved for ecclesiastical judges, whose active intervention took root above all in the southern German dioceses in the late fifteenth century. An exemplary case of this kind, which took place before 1477 in the diocese of Mainz, should underscore this finding once more.²⁵² Margarita Piger and Thomas Wartner were engaged to each other. Before they had married and consummated the marriage, Leonhard, Thomas's brother, seduced Thomas's bride and impregnated her. Thomas and Margarita publicly married with the church's blessing while she was still pregnant, moved in together, and consummated the marriage or, as the supplication expresses it, the *contubernium*. Since the two had gotten married after the banns of marriage and since Margarita's affair with her husband's brother had not gone unnoticed, the couple was charged by the archiepiscopal vicar residing in Aschaffenburg, under whose canonical jurisdiction they lived. The judge carried out a proper investigative process (*servatis de iure servandis*, as the common formulation says in the supplications), which ended with the judgment that their marriage was invalid, for the impediment of *affinitas superveniens* stood between them. They were thus condemned to separate. Thomas received the permission to marry another woman, while Margarita, because she had committed incest, could no longer enter into a marriage. As penance for her offense, she instead had to remain unmari-

252. RPG 6.2738.

ried forever and was to enter a monastery. The young woman did not want to accept this punishment imposed on her by the spiritual court in Aschaffenburg. For this reason, she appealed to the pope with the reasoning that entrance into a monastery must come about of one's own free will, and she had no intention of becoming a nun. She asked the Holy Father to lift this harsh sentence. She was still young, as the usual argumentation went; it was thus impossible for her to live continently. She wanted the pope to convert her penance (here, the prohibition to get married again) into another good work, which was very common in the arena of penance. And finally she asked that, against the Aschaffenburg judgment, she could marry again.

The penitentiary reacted to the supplication of the young woman with remarkable compliance. As also in other judgments of the officialate courts, which sought as a rule to follow the letter of the law, the papal office of penance and pardon set itself on the side of the suppliant, put mercy before justice, and met his or her every wish. The major penitentiary himself signed this request positively on the basis of the full power issued to him by the pope. Margarita did not have to enter a cloister and could marry again—not, however, her Thomas, but she had not requested that in her supplication anyway.



Marriage Processes in German Courts

In the satirical poem playing in the Alemannian region around 1400, “The Ring,” by the advocate Heinrich Wittenwiler of Constance, the poet has his protagonists, the young peasants Bertschi Triefnas and a certain Mätzli, get married in the company of friends and relatives, but *an* (= *ohne*) *schuolern und an phaffen*, which means, without the involvement of the church. When the two later asked their priest for the ecclesiastical ceremonial celebration (*sollemnisatio*) of their marriage, he let a forcefully severe sermon loose on the congregation from the pulpit:

Listen up, you ladies and lads!
 Know this: it is the canon law
 that, if someone can take another, he should do so
 publicly (and he thus does well),
 but not secretly without a priest!
 To this end we have managed
 to convince our parishioners of this,
 from morning to night in the churches,
 from the bridegroom to the bride
 and, above all, the common folk,
 that someone would be and is guilty
 if he contradicts this teaching.¹

1. Heinrich Wittenwiler, *Der Ring*, ed. Horst Brunner (Stuttgart, 1999), ll.5405–5416: “Hört, ier frauwen und ier knecht! / Wisst, es ist der kirchen recht,

The congregation was given a lecture, for Bertschi and Mätzli had behaved exactly like thousands of other couples in the fifteenth century. They knew the ecclesiastical norms for marrying, but they did not heed them.

In the following chapter, the viewpoint in our investigation switches from the Roman sources, the supplications of the penitentiary, back to those *in partibus*. It must first be asked what results from regional studies of marriage processes in the German realm? The source material from Rome should be set side by side with the findings *in partibus* based on the examples of several German imperial dioceses. We will investigate here how many (or rather how few) of the marriage processes carried out before the officialate courts ended in a supplication to Rome and what information can be obtained from the sources of the officialate courts in the German empire, which have been transmitted only in fragments. The selection of the bishoprics put forward here is the result of the respective holdings of the local sources as well as the quality of the existing literature.

But can the procedural happenings at the officialate courts in the empire be compared at all? Did not great regional differences exist? Not at all, for marriage processes were not subject to the whims and mood of the local official. Instead, everywhere in Christian Europe they were carried out on a solid legal basis, the romano-canonical *ordo iudiciarius*, and decided according to the prescriptions of the church's marriage law. What we have concluded from the Roman supplications about the course of a process is also confirmed *in partibus*. The procedure began either with the summoning of a wayward couple by the official or with a charge brought before him and the *litis contestatio*, the counter-claim of the accused. Plaintiffs and defendants could advance formal objections (*exceptiones*), as was known from Roman law and came into use again in canon law beginning in the twelfth century, and name witnesses. According to the pre-

/ Daz einr ein chan im nemen schol / Offenleich (so tut er wol), / Nicht so haimleich, ane paffen! / Dar zuo ist mit uns geschaffen, / Daz wir chündin überlaut / Von dem preutgom und der praut / Und vor allem volk dar zuo / In der kirchen spat und fruo, / Ob iemant wär und wesen scholt, / Der da wider sprechen wolt."

scription of the Fourth Lateran Council, claims before the court, especially by witnesses, had to be recorded.² The procedure could be interrupted by intermediate or interlocutory sentences (*sententie interlocutorie*), and it ended with a sentence by the marriage judge, the *sententia definitiva*. This was to be composed in written form by a notary and registered. In many courts, as in Chur, Freising, and Regensburg, the written sentence of the court began with an invocation of the Lord from the opening words of one of the best-known texts of romano-canonical procedure, namely, the treatise *Invocato Christi nomine* of Tancred of Bologna (1185–1236), in order to testify in the presence of God that everything had proceeded rightfully and lawfully. At every stage of the procedure, both parties had the right to make an appeal to a superior jurisdiction, from Chur or Constance to the archbishop of Mainz, from Freising and Regensburg to the archbishop of Salzburg, and from all courts to the pope. At the beginning of the fourteenth century, in order to prevent processes from being drawn out too long, Pope Clement V instituted the so-called summary process, which the penitentiary supplications occasionally mention and which was also less costly for the participants in the process.³ The majority of the marriage processes in the empire might have been carried out in summary form, as can be shown from the examples extant in Freising, Regensburg, and the archdeaconry of Xanten.⁴

One gains insight into the practical workings of the officialate courts both from the few still extant acts and from several medieval “handbooks.” In order to ease the repetitive work, the judges and notaries constructed form books and chancery regulations in order to streamline the use of the correct juristic formulation of rules and judgments. A legally skilled notary by the name of Nikolaus Bräschli, who had studied at the universities in Padua and Vienna, had con-

2. X 2.19.11: “Quoniam contra falsam.” On the romano-canonical procedure, see the foundational treatment of Linda Fowler-Magerl, *Ordines iudicarii and Libelli de ordine iudiciorum: From the Middle of the 12th to the End of the 15th Century* (Typologie des sources du moyen âge 63; Turnhout, 1994), 29–55.

3. Decretal *Saepe*, Clem. 5.11.2. A description of summary process may be found in Löhr, *Die Verwaltung des kölnischen Großarchidiakonats Xanten*, 222–23.

4. Deutsch, *Ehegerichtsbarkeit*, 105–41 and 177–256. On Xanten, cf. Löhr.

structed such a formulary for the episcopal court of Chur around 1440. Among the almost three hundred examples, thirty-four texts contained in it have to do with marriage processes.⁵ They deal with the summoning of witnesses (numbers 13 and 29), the calls for their interrogation (45, 48, 50, 51), or with urging married people to uphold their duties (164, 165), with questions of procedure (178, 179), and with the correct formulation of an appeal to the pope (207, 208, 227). The motifs of the *sententiae* contained in the form books correlate entirely and fully with the material of the most varied marriage processes known from the penitentiary supplications: a husband has disappeared for fourteen years (209); the bishop of Chur lifts the sentence of a judge in Constance delegated by the pope and reverses the decision (210, 211); the existence of a marriage is confirmed (213, 216, 217, 218, 224); another marriage is dissolved because of impotence (214, 215); the claims of women are dismissed (222, 223 [in this case because of *vis et metus*], 225); the claim to a marriage portion owed because of seduction and impregnation, on the other hand, is recognized (219). The amount of this claim is determined in another judgment at five Rhenish florins. Besides these things, the formulary also puts forward alimony payments and a compensation for pregnancy and birth (220). Despite an *affinitas superveniens* through an unproven instance of sexual intercourse with the relative of a woman, a couple in Chur could remain married (221). Decisions reserved for the pope, such as dispensations from the various impediments of familial relations, rightfully do not appear in the formula book in Chur.

Today there is hardly a trace in the archives of the tens of thousands of processes which were brought before the officialate courts in the late Middle Ages. That is not surprising, for, after the end of the process, there was no need to preserve records and sentences, and certainly not beyond the death of the participants. Nevertheless, several legally important sources are preserved in Chur (for Constance), Freising, Cologne, and Regensburg. They will be analyzed

5. Edited by Otto P. Clavadetscher, *Formularbuch der bischöflichen Kurie von Chur aus dem 15. Jahrhundert* (Quellen und Forschungen zur Bündner Geschichte 11; Chur, 2003); in parantheses are the numbers from the edition.

further below. What is contained in these records? They record the age of the litigants and witnesses, occasionally also their economic circumstances, mention the calumny oath taken by the witnesses, and quote decisive claims of the participants in the process word for word in their own dialect.⁶ The respective parties or their procurators got a copy of the Latin record; they were given the opportunity to inspect it. That is known from a record from February 21, 1459 with the statements of several inhabitants of the city of St. Gall who had been questioned as witnesses. The author of this text, the marriage commissar Hechinger in Constance, informed the witnesses of the fact "that the opposing party is given a copy of their statements, that a legal objection (*exceptio*) against the witnesses and their statements is permitted, and that the statements in the city hall (*consulatus*) or elsewhere would be made known at the pleasure of the opposing party." The presiding judge wanted to make the witnesses understand that they were to consider their statements carefully, for the acts of the process were quasi-public.

Marriage Processes in the Bishopric of Constance

We begin our trip through the dioceses in the southwest because of the relatively good survival of the sources. In the fifteenth century, Constance was geographically the largest bishopric in the German empire.⁷ About 1,700 parishes were numbered in its sixty-four deaneries. Things were not bad for a cleric of the diocese around 1480. The income from a prebend was higher than average; the majority of those holding a prebend had yields of more than forty florins or thirty pfund pfennige a year.⁸ With its 8,000 inhabitants, the episcopal city on Lake Constance was at a crossroads; trade routes as well as pilgrimage roads to Rome and Santiago passed through there. In the second half of the fifteenth century, competent and educated bish-

6. Statements in the vernacular appear in the processes in Freising, Constance, and Regensburg. Cf. Deutsch, *Ehegerichtsbarkeit*, 223–24.

7. On the bishopric of Constance in the late Middle Ages, cf. Degler-Spengler in HS 1.2.92–122.

8. Arend, *Zwischen Bischof und Gemeinde*, 98.

ops who were bent on church reform sat in the seat of Constance: Heinrich von Hewen (1436–62), Burkhard von Randegg (1462–66), and Hermann von Breitenlandenber (1466–74). During the episcopal controversy after Bishop Hermann's death, Otto von Sonnenberg and Ludwig von Freiberg (1474–80) fought and contended with each other for lordship over the diocese. Otto ruled then as sole inhabitant of the seat from 1480 to 1491.⁹ All the bishops named here had studied at universities in Italy and/or the empire, were convinced of the necessity of radical reform, and called diocesan synods shortly after their election, which were supposed to be devoted to this task of reform.¹⁰ The bishops of Constance were, however, permanently short of funds, having meager worldly possessions, and were driven to secure income from their spiritual jurisdiction as well. As a result, they filled up the episcopal purse by chasing down violations of ecclesiastical prescriptions (as indeed occurred in other dioceses as well). For example, on March 20, 1447, the vicar general of Bishop Heinrich von Hewen permitted the parish priest of Isny to absolve a certain Anna Arnoltin from adultery, to impose a fine on her, and also to commute the usual public penance "into another good work," which undoubtedly meant another fine.¹¹ Money flowed into the episcopal treasury from the great number of legal processes in marital matters.

The bishops of Constance convened regional church assemblies and diocesan synods, which they used both for taxing their clerics and for carrying out reforms in the bishopric. Bishop Hermann held a synod on July 6, 1467, just a year after his election. In the reform statutes issued on September 16, 1469, he complained about, among other grievances, a lack of morality in marriage among the faithful of his diocese. The clergy was therefore supposed to proclaim the statutes in the bishopric and admonish the faithful "to cease from adultery, lewdness, and unpermitted cohabitation . . . they were supposed to urge married people who were not living together to live

9. On the bishops, cf. HS 1.2.351–71.

10. On this point, cf. Konstantin Maier, "Die Konstanzer Diözesansynoden im Mittelalter und in der Neuzeit," *Rottenburger Jahrbuch für Kirchengeschichte* 5 (1986), 57–61.

11. REC 11237a; Krebs, "Nachlese zu den REC," *Zeitschrift für die Geschichte des Oberrheins* 98 (1950), 181–283.

together within a month, under threat of exclusion from the sacraments." The synodal statutes were to be made known everywhere in the diocese, which, according to the instructions of his predecessor, Heinrich von Hewen, was actually supposed to have happened four times a year.¹² The synodal statutes are occasionally referenced in the supplications to the pope from the bishopric of Constance.¹³ Besides episcopal visitations, the synodal statutes, when combined with the controls by the official and the parish clergy in the bishopric of Constance, led to an intensive prosecution of marriages that did not conform to the law. Marital impediments from close familial ties between couples wanting to marry and couples already married could be laid bare with the help of the baptismal books instituted in the bishopric in 1435.

The synodal statutes of Constance assigned the official sole jurisdiction in marital matters as the representative of the bishop in all court matters. That is to say, it was his duty to arbitrate in disputes between married couples; the validity or invalidity of a marriage depended on his judgment. The official could order a shortened, summary (and in the end cheaper) process in insignificant cases where less than two Haller pounds were in question. Most marriage processes proceeded in this way. If processes were advanced further, however, to Mainz before the archiepiscopal court or to the Roman curia, a case could be drawn out for years and was correspondingly costly.¹⁴ A marriage process began in the couple's parish church. When relevant problems arose, the confessors were supposed to refer the faithful to the official, under threat of excommunication. The official became active of his own initiative (*ex officio*), after a denunciation (*accusatio publica*), or on the basis of an objection after the banns of marriage. The officials and vicars general proceeded not only against married couples in the wrong but also equally sharply against those engaging in concubinage, especially when men took married women as concubines.¹⁵ On multiple occasions, the legal representative of the bishop intervened

12. REC 13643 and 10199.

13. RPG 5.820 and 677 from the same couple.

14. Cf. REC 13050 (year 1465) and REC 13381 (year 1468).

15. Cf. the case of the priest of Birmensdorf, Johann von Ysnach, REC 12918 and RG 9.3298.

with general admonitions to the parish priests of individual cities and congregations, instructing them to urge their sheep to live in marriages in conformity with the church.¹⁶ Wayward couples were obliged to appear before the official two months after the warning at the latest. Decisions of the marriage judge were made known to the parish priest responsible for the offenders. As a consequence, those caring for their parishioners' souls often refused to give sacraments to the sinners.¹⁷ Numerous records exist for Constance, a clear indication of a thick network of social controls over the religious behavior in the parishes of Constance's diocese.¹⁸

While money, assets, and dowries are spoken of only rarely in ecclesiastical courts, in suits dealing with deflowering, the judges almost always imposed a fixed payment on the guilty man, apparently dependent on the social status of those involved; the payment functioned, then, as a reparation. The payment is often named a marriage portion in the Constance sources. "After determining the assets of both sides," the official awarded the plaintiff Anna Bomgarterin from Bischofszell the not insignificant sum of twenty-five pfund pfennige. The defendant's proctor submitted an objection to this and appealed to Rome to the *apostoli*.¹⁹ In the same vein, Johannes Savageti, as judge delegate, made a sentence worse because the defendant refused to make good on the costs to the plaintiff.²⁰ Even extra-judicial settlements in cases of deflowering came before the officialate court. In 1480, the official of Constance dealt with a suit of Elsa Vögtin from Ellenbogen against the priest Philipp von Andelsbuch in Radolfzell. Elsa claimed that the cleric had deflowered her, which he denied, although he did admit to having had intercourse with her. Elsa was known, however, as "a loose girl" and had gotten sexually involved with numerous men. For the sake of peace and quiet, he gave her cloths in the value of four Rhenish florins.²¹

16. Cf. REC 10933 to the priest of Ulm (year 1445), REC 12783 (year 1463–64) to the priest of Rotweil.

17. Cf. REC 10488 (year 1441) to the priest of Rorschach.

18. REC 10554, 10831/11131, 10859, 10921, 10999, and 13407.

19. REC 12459 (year 1461). The case does not appear, however, in RPG 4.

20. REC 14823 and 14858 (year 1476).

21. REC 15302 (year 1480) and EAF Konzeptbuch K f. 103.

Although secular tribunals could not get mixed up in officialate processes, occasionally it happened in the bishopric of Constance that a municipal court used its influence with the official for a citizen of its own city or for a Swiss citizen against whom a legal process was pending or was supposed to be initiated.²² On June 1, 1474, the city council of Bern intervened with the vicar general of Constance, encouraging him to urge Margarete Teck uff der Katzen to return once more to her husband.²³

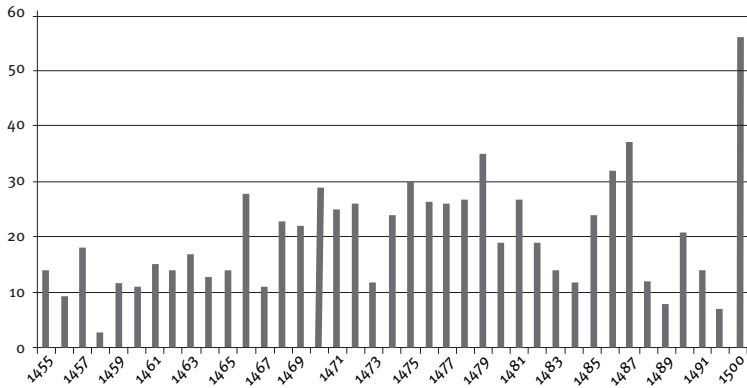
Supplications from Constance in Rome

In the period of investigation, the years between 1455 and 1492 and including the Holy Year 1500, a total of 794 supplications were registered by the penitentiary scribes in Rome from suppliants from the bishopric of Constance. In contrast, under the popes Calixtus III until Paul II, only seventeen marriage cases from the bishopric of Lake Constance are noted in the register of the Roman chancery. One can gather from that fact that the penitentiary was the only papal office responsible for pardons of that kind. What does the statistical evaluation of the almost 800 supplications reveal?

In the roughly forty years, the number of requests increases from an average of twelve to an average of twenty-four per year. In the years 1475, 1479, 1486, and 1487 as well as 1500, the number of supplications entered is greater than the mean. To what can that be attributed? The two Holy Years explain the increase in 1475 and 1500, and here 1500 shows itself once more to be the "more successful Jubilee." For 1486–87, the coronation of Maximilian could serve as an explanation for the increased traffic at the curia. The data does not permit one to decide whether the above-mentioned diocesan synods in Constance had an effect on the activity of the official and led to an increase in supplications dealing with marital matters. The episcopal controversy of 1474–80 likewise leaves behind no trace in the penitentiary supplications. One finds many duplicates among the supplications from Constance and supplications in which the person making the proposal was forced to make additions to the request a

22. REC 13115 (year 1466), REC 13334 (year 1467) und REC 14924.

23. REC 14150.



Graph 13. Penitentiary Supplications from the Bishopric of Constance

second time around or to undertake corrections of erroneous or false statements, for otherwise their request would not have held up *in partibus* against an investigation of the *veritas precum*.²⁴

Of the 794 couples from Constance who appear in the register of the penitentiary, only 88 (11 percent) submitted a request for dispensation prior to contracting a marriage, whereas 590 were already married and had consummated the marriage when they requested pardon. They had been charged because of a marital impediment, and the official had separated at least 61 of them. The *impedimenta* are distributed among consanguinity (428), kinship by marriage (227), godparenthood (82), sponsorship at confirmation (26), and a few cases of *publica honestas*. One hundred forty-one couples admitted to having children already. Of the supplicating spouses, 534 claimed to know nothing of the *impedimentum* at the time they got married, while 117 did know of the impediment. Almost the same number of couples (105) had married clandestinely. Over all, those men and women who knew about a marriage impediment were the ones inclined to enter into a clandestine union. Only 161 of the 794

24. This is the case in RPG 3.1741/1966; 4.669/5.86; 5.269/320; 5.557/562; 5.677/820.

couples from Constance claimed to have gotten married *publice* and *in facie ecclesie*. The will for the common life of matrimony despite notorious offenses against the canon law in force manifests itself very clearly: 469 of the Constance couples requested pardon from the pope to be able to remain married despite an irregularity in their union, and 581 couples explicitly pleaded with Rome for the legitimization of already living or future children. In the case of at least 32 couples, one of the partners had already been married once before.

Fines (*compositiones*) were imposed on 129 couples from Constance, as a rule when there was an impediment in the third degree of relationship as well as when the petitioners knowingly violated canon law. The amount of this fine can be determined in only five cases through an entry in the Vatican register of *introitus* and *exitus*. Aberlin and Angela Stoeblin paid the papal datary three camera florins, the Vaibels three, the Sacherlins six, Konradin Hagen and Anna Ottingerin five, and Michael and Barbara Reinli four²⁵—all in all these were not exorbitant penances, which could amount to a hundred florins among the nobility. For dispensations that had been issued by the chancery, the composition payment always came out higher. Thus, Heinrich Wiszhant and his wife received a penalty of thirty florins; Nikolaus Roet and Susanna Klammerin had to pay twenty florins, and a couple from Dornstetten sixteen.²⁶

How did the supplications reach Rome from Constance? Who paid the composition in Rome for the petitioner? A German couple would hardly have taken the onerous and expensive trip over the Alps to the Tiber themselves. Proctors at the officialate courts prepared supplications, and their Roman colleagues presented them in Rome. Proctors were also the ones who paid the just-named penal sums. In two of the payments, the documents name Stephan Nunkilch, a cleric who was from Constance and active at the Roman curia, as the go-between. Supplications also often travelled to Rome in the luggage of pilgrims and merchants, diplomats and proctors. On

25. The amounts are in RPG 5.185 = RG 9.3987; RPG 5.260 = RG 9.5658; RPG 5.261 = RG 9.1; RPG 5.545 = RG 9.741; RPG 5.616 = RG 9.4598 and RPG 5.724 = RG 9.6177.

26. RG 9.2209, 4851, and 5281, all related in the third degree.

January 4, 1463, for example, five supplications dealing with marital matters from Constance were registered in Rome.²⁷ At this time, the Constance clerics Gebhard Sattler and Georg Winterstetter, both active later as vicars general, found themselves at the curia, working to effect the confirmation of the election of Bishop Burkhard von Randegg. The election had taken place on December 1, 1462; the confirmation followed on January 7, 1463. They could have brought the supplications with them in their luggage and turned them over to the appropriate office at the curia. Probably two other supplications from Constance from the end of December and beginning of January also reached Rome in this way.²⁸ Sattler and Winterstetter also advanced their own interests in benefices at this time, taking advantage of their role in Burkhard's appointment.²⁹

Just as in other dioceses, most of the marriage processes before the official did not leave behind any noticeable traces in the archives. Only from the beginning of the sixteenth century can such processes be reconstructed from the sources in a statistically significant number. These scraps unfortunately only rarely permit one, if one has the help of the episcopal register of Constance and additional unpublished sources, to pursue the course of a judicial disagreement and its continuation to Mainz or the papal court. In general, the percentages known from other dioceses also arise in Constance: in suits seeking to have a spouse assigned in a marriage, women appear far more frequently (72 percent of the 1,144 cases) than men (28 percent), and the dismissal rate (80 to 90 percent) as well as the ratio of men to women as plaintiffs are, as is to be expected, exactly as high as in Chur.³⁰ At the beginning of the sixteenth century, only 139 of more than 2,000 marriage processes (7 percent) went on to Mainz, and only 53 (scarcely 3 percent) reached the apostolic see. A few examples of such a graduated procedural course should be studied in more detail.³¹ If one accepts that, even in the fifteenth century, on

27. RPG 4.602–605 and 614.

28. RPG 5.1505 from December 27, 1462 and 5.1513 from January 8, 1463.

29. On this point, RG 8.1334 and 1473.

30. This information comes from Albert, *Der gemeine Mann*, 271–72.

31. Cf. *ibid.*, 146–47 and 150–51. All facts are according to REC 13477 and RPG 6.3678.

average no more than three to five percent (henceforth called the “three-to-five-percent formula”) of the legal processes reached the penitentiary, the official must have been downright swamped with such processes. Carried over to our period of investigation, according to this projection, 800 to 1,200 marriage processes were handled in Constance per year. This number may very well approach reality, since, for the years 1514 to 1529, one can calculate on the basis of local sources that a single judge conducted 214 marriage processes per year.³²

A marriage process in Constance, which had passed through every jurisdiction before 1470, has left behind traces in the register of the papal chancery in exceptional form.³³ Georg Smiter had been brought up on charges before the Constance official by Walpurga Setzgin, who falsely, as he thought, claimed that Georg had contracted marriage with her *per verba de praesenti*. Walpurga wanted to have him assigned as her husband by the court. The official issued a *sententia definitiva* in Walpurga’s favor, which Georg appealed to Mainz. For unknown reasons, the judges in Mainz revoked the decision in Constance, whereupon Walpurga appealed to Rome. The Roman judges declared the appeal to be invalid based on the lack of evidence and granted Georg permission to marry another woman. A year later Georg Smiter thus married Anna Statmullerin *per verba de praesenti*, and they consummated the marriage. Walpurga did not give up, however, and now brought suit before the suffragan bishop of Constance, the Franciscan Thomas Weldner, who declared himself to have jurisdiction in the matter. Although Georg and Anna for their part had turned to Rome and would have expected a decision of the penitentiary, the suffragan bishop, knowing about this appeal, commanded the couple to separate and threatened them with excommunication if they did not act accordingly. Since Georg and Anna did not obey his command, he pronounced the excommunication. The couple then asked the pope to absolve them and to deliver their case to the bishops of Augsburg, Strasburg, and Basel as papal judges delegate. These were supposed to decide the dispute in accord with can-

32. According to Albert, *Der gemeine Mann*, 167.

33. RG 9.1537 and ASV Reg. Lat. 695 fols. 147r–148r (May 30, 1470).

on law without any chance of further appeal and with the derogation of Walpurga's privileges *de non evocando*. Despite the long path of this dispute through various courts of appeal, the local sources reveal nothing about this case; its outcome thus remains unknown.

Where a successful union of Roman and local sources exists, exciting insights into the daily life of married couples emerges. From the sources in Constance we can discover interesting details about a three-sided story among Anna Michlin, Anna Rüterin, and Heinrich Greminger. Prior to 1468, Anna Michlin had brought a process before the officialate court of Constance. The court's sentence had declared not her but a certain Anna Rüterin as the rightful wife of Heinrich Greminger. Heinrich made an appeal to Mainz. In the course of the process carried out there, Anna Michlin received a summons to the archiepiscopal city. In order to spare her the trip, the court in Constance made a motion to be able to examine her on Lake Constance. This motion, technically correct according to procedural rules, dates from August 2, 1468. It remains an open question how the matter went from there. More than ten years later, on June 7, 1479, the supplication scribes of the papal penitentiary registered a supplication from Greminger for a *littera declaratoria*. There we find out that Greminger came from St. Gall. In his supplication's narrative, he portrays the past stages of the ten-year disagreement. At one time he had wanted to lay claim to Anna Michlin as his legitimate wife before the Constance official, but Anna had been judged not to be his wife by the court. He did not explain the reasons that could have led to the officialate court making its decision. He had then submitted an appeal in Mainz. The Mainz official had later summoned Anna Michlin. Since she did not appear (apparently the interrogation desired by her in Constance was not permitted), the judge in Mainz lifted the judgment from Constance and declared Anna to be his wife, *minus iuste*, as Heinrich and his proctor lamented. He would gladly have followed the judgment and would have accepted Anna as his wife, Heinrich stressed, but he later found out that Anna Michlin, before the marriage agreement with him, had already contracted a marriage with Konrad Sparer and afterwards another with Gaspar Reslar *per verba de praesenti*. Heinrich thus asked the penitentiary to certify that

he was not bound in any marital union with Anna. The *littera* was delivered to the bishop of Constance with the proviso that he check over the information in the supplication and, if it proved to be true, decide in Heinrich's favor. How this story going back more than ten years continued will remain in the dark unless some still unknown sources in Constance should throw new light on the entire matter.

A second case in which one can manage to link the sources in Constance with those in the Vatican concerns a departure from a cloister. The supplication was registered in Rome under the date of October 21, 1475. In it Heinrich Schultheisz and Elisabeth Henping (Hubin) from Villingen ask for a declaratory letter. Elisabeth had taken the three apostolic vows of poverty, chastity, and obedience in a community of Beguines that stood under the oversight of the Third Order of Franciscans. Heinrich and Elisabeth had nevertheless had sexual intercourse many times, resulting in her becoming pregnant. For this reason, the two contracted a marriage *per verba de praesenti* without the banns (*clandestine*). Afterwards, they consummated the marriage, which made it valid although not legal. Elisabeth had left the Beguine community but later returned because she erroneously believed that her marriage was not valid. Since Elisabeth had not made profession in a recognized order and she and Heinrich wanted to remain in their marriage, the petitioners asked for a suitable declaration from the penitentiary and the legitimization of their children. In actuality, they also would have needed to plead for absolution from the clandestine marriage. The regent and auditor sent the proceedings to Constance to the ordinary for a clarification of the facts (*veritas precum*).³⁴ There the officialate court busied itself with the matter on April 24, 1476.³⁵ "After the court investigated and looked into the [Beguine community's] rule, which the community leader and sisters had to produce (at Villingen)," the court decided that the marriage was valid and could be continued. The house of Beguines evidently possessed no papally recognized rule; thus one could leave the house despite the three-fold oath. It was again clear that, wherever possible, Rome granted precedence to a marriage over other bonds.

34. RPG 6.3564.

35. REC 14665a.

From the Work of the Marriage Commissar

It was absolutely impossible for the bishop of Constance to carry out his duties of supervising the faithful, especially the control of irregularities in married life, with only the help of officials. His diocese covered 45,000 square kilometers, stretching from Stuttgart to the Gotthard Pass and from the Upper Rhine Valley to Kempten. In the years 1450 to 1466, the jurist Johannes Zeller held the position of official in Constance; Jakob Grimm (1467–70) and Andreas Wall, *decretorum doctor* (1468–72) followed him.³⁶ Each official required additional juristically trained personnel to cope with the flood of processes. To that end, and in accord with the judicial order established by Bishop Marquard von Randeck (1398–1406), so-called marriage commissars (*in causis matrimonialibus generales commissarii*) stood at the disposal of the official or vicar general (these offices were often united in the same person in the fifteenth century). In such a huge diocese, each official was dependent on the preparatory work of a marriage commissar for a marriage process, in the preliminary investigations and interrogation of witnesses. Such legally and literarily skilled commissars appointed by the bishop lived in many cities of the bishopric. According to the court order of Bishop Marquard, a notary was to be assigned to every marriage commissar to make the records. Individual regions were apparently allocated to the commissars. A Johann Molitor, a priest in Cannstatt, for example, served between 1444 and 1473 as “general commissar of the curia of Constance for his district.”³⁷

A marriage commissar did not himself possess any authority to make decisions in a legal process, but he did the preliminary work. He questioned the witnesses and forwarded the recorded witness statements to the official, who made his decision on the basis of the file, occasionally also ordering a second investigation.³⁸ Since, according to the principles of the medieval doctrine of evidence, the witness statements represented the backbone of the learned admin-

36. On the officials, HS 1.2.592ff.

37. REC 10838 and 14018.

38. On the commissars: Brülisauer in HS 1.2.673–75. Examination: BAC Mappe 60 Blatt 92 and 110.

istration of law, the fact of something being written down was of the utmost importance; the decretal *Quoniam contra falsam assertionem* (X 2.19.11) based on a decision of the Fourth Lateran Council had already prescribed that a written record be made. One must conclude from this that, even beyond the marriage processes documented in the Vatican transmission, extensive recorded material that is now largely lost existed in Constance. Even the slight remains that exist are thus of great value for the study of marriage processes.

Johannes Sutor, who came from Zurzach, held the office of episcopal marriage commissar in the city Freiburg im Breisgau in the western part of the bishopric of Constance. The Freiburg city archives contain a paper manuscript, 218 pages long, from his pen with extensive formulas for marriage processes. Johannes, chaplain in Freiburg, graduate in canon law, held the title "commissar general in marriage matters." The mentioning of Bishop Otto of Constance and other data allows one to suppose that Sutor wrote his manual around 1500. Only time will tell whether the case—from which he drew his material and in which an Anna de Waltzhut from Freiburg and a Johannes de Lauffenburg, also from the city in Breisgau, are the opposing parties—was fictitious or whether the suppliants will perhaps still appear in the archive of the penitentiary. That could also prove to be the case with regard to other parties in Sutor's book, a certain Wilhelm Brotbeck de Pfortzen and an Anna Bluntschlin, both also from Freiburg. Another judge in Constance, Johannes Fridinger, official of Bishop Hugo von Hohenlandenberg from 1510 to 1527, decided 214 marriage processes per year between 1514 and 1525, among which 61 percent dealt with suits seeking the awarding of a spouse, 22 percent with a marriage impediment, 13 percent with checking the validity of a marriage, and the remaining 5 percent with other matters. In most of the processes, consanguinity or kinship by marriage was the issue; among the couples in the marriages involved in these processes, seventy-one knew about the impediment. The number of court disputes about married life did not cease after 1500.³⁹

39. Albert, *Der gemeine Mann*, 167–68, 192, and HS 1.2.597 (B. Ottnand).

For the region of St. Gall, the official Johannes Zeller of Constance had appointed a marriage commissar by the name of Johann Hechinger.⁴⁰ In his chief profession, Hechinger, who held an imperial privilege as notary and came from Rheinfelden in the diocese of Basel, was one of the lawyers and court scribes active for the abbot of St. Gall. He held his office in the city of the time-honored Benedictine monastery. A notebook from his literary bequest has been preserved; it records in a neat script the outlines of three dozen witness records for marriage cases and other legal business—in total, eighty matters, which date to the period from November 1454 to February 1459. Twenty-one of the marriage cases speak of defloration or seduction; eighteen deal with too close consanguinity or kinship by marriage, two with a *cognatio spiritualis*. Moreover, they mention impotence, two marriages forced by the parents, a separation from bed and table, and a clandestine marriage. Hechinger twice cooperated in a *retractatio*, a request for a second deliberation, which had been submitted against a first decision of the marriage judge. For the witnesses, Hechinger distinguished those who had been expressly summoned by him and others who “came to him of their own accord.”⁴¹

In Constance as in other dioceses, a procedure in marriage processes proceeded on the basis of canonical procedural law, which we can also reconstruct in light of Hechinger’s manual. The official routinely commissioned the marriage commissar with the enforcement of the law; the summons then went to the respective parish priest of the opposing parties, who also summoned witnesses of the accuser or accused, whom the marriage commissar then examined, sometimes in the presence of the priest. The statements of the plaintiff and defendant were read to the witnesses in their dialect, and then they were supposed to be questioned about those statements. At one point Hechinger states, “The statements of the plaintiff were read and translated.”⁴² Each witness had to take an oath of calumny and was required before the examination to swear “that he had made no

40. On Hechinger and his manual, cf. Albert, *Der gemeine Mann*, 169–73.

41. It is expressed in this way in a court record from 1458, BAC Mappe 60 Blatt 216.

42. BAC Mappe 60 Blatt 72: “depositionibus actricis perlectis et vulgarisatis.”

agreement, either with the plaintiff or the defendant or one of the other witnesses, he had not been bribed, and he expected no benefit from his statement."⁴³ If it was necessary to gather information about an impediment of close relations, the official or the commissar called upon the priest of the affected couple to announce from the pulpit that potential witnesses would have to register with him. The formulary of one such demand is testified to in Hechinger's manual. In that document from November 16, 1454, the marriage commissar of Constance commanded the priest Nikolaus von Gaisz in Appenzell, in the worship service on the following Sunday, to instruct all members of the congregation who knew something about an *affinitas superveniens* between Ulrich Stocker and Ellina Ronerin to register with Hechinger in St. Gall under punishment of excommunication, and to do so within a week.⁴⁴ The marriage commissar in St. Gall even examined priests, for example Wilhelm Hor von Goldach, as witnesses.⁴⁵ An important role in marriage processes thus fell to the parish ecclesiastics as "functionaries" of the spiritual court (Albert); they also then had to exclude banned members from communion. Those who could afford it utilized the help of proctors at the interrogation.⁴⁶ Hechinger mentioned these by name in his records.

As already mentioned, legal processes about defloration make up twenty percent of all proceedings in the dealings recorded by Hechinger. In one proceeding, which Elisabeth Groebin had brought against Johannes Gebhart before the Constance official, Hechinger had been commissioned to question the witness Rudinus Buman from Alterswil. According to his records, the defendant, Johannes, had admitted to Rudin, "I was at her house yesterday and did it with her."⁴⁷ It was clear what Johannes meant by that. In another deflora-

43. As it says in Hechinger's manual, BAC Mappe 60 Blatt 11, demanded of a witness by the name of Johannes Urseler in 1454.

44. BAC Mappe 60 Blatt 14. Another of Hechinger's mandates is in REC 11772 from February 22, 1454.

45. BAC Mappe 60 Blatt 12f and BAC Mappe 60 Blatt 64 and elsewhere.

46. Heinrich Egger had himself represented by Heinrich Louchbichler and Engela Altherrin by Heinrich Fridtpolt as their respective proctors (BAC Mappe 60 Blatt 37). A Rudolph Fridtpolt was vice-parish priest of St. Lawrence's Church in St. Gall (*ibid.*, Blatt 61).

47. BAC Mappe 60 Blatt 22.

tion process from the end of 1455, Hechinger had to find out the pecuniary circumstances of the defendant, Kaspar Hochrütiner, in order to determine the amount of the *Kranzgeld*.⁴⁸ In these two cases, all other sources about the activities of the commissar are lacking. It is only by some stroke of good luck in the transmission that the back story to two supplications registered in the penitentiary found expression in Hechinger's notebook.⁴⁹ The events had taken place between the summer of 1454 and the fall of 1455. Thanks to this source, the backgrounds to the scanty words in the penitentiary supplications can be illuminated.

Johann Schmid and Adelheid Tanner from the Swiss Appenzell had gotten married,⁵⁰ even though an impediment of blood consanguinity in the third and fourth degree existed between them. When the official found out about this violation of canon law, he opened a process against the couple and commissioned Hechinger with the local investigation. For his part, Hechinger had witnesses summoned by the parish priest in Huntwil who were supposed to give information about the kinship between Johann and Adelheid. In contrast with other records of the manual, it is noteworthy that Hechinger wrote out the entire record of the witness statements in Latin and did not draw up any statements in the vernacular, for the interrogation certainly did not take place in the Latin language. One can gather from Hechinger's records that he had questioned a total of sixteen witnesses in St. Gall on December 17, 1454. They had been summoned by the parish priest from Huntwil; their names, home parishes, ages (between twenty and ninety-six), economic circumstances, and relationships to the parties in question were always stated with precision; all were also placed under oath.⁵¹ The witness statements show that the Schmid and Tanner families were not without means and had at their disposal incomes of 100 to 400 pounds pence. That was no meager sum, for the daily wage of a craftsman

48. REC 11934.

49. RPG 3.1713 and 1716.

50. The names are recorded in RPG 3.1713.

51. BAC Mappe 60 Blatt 22–28, Title Blatt 22: "Causa matrimonialis super impedimento consanguinitatis coram officiali mota inter Johannem Schmid de Huntwil ex una et Adelhaidem Tannerin ibidem partibus ex altera" (see figure 13).

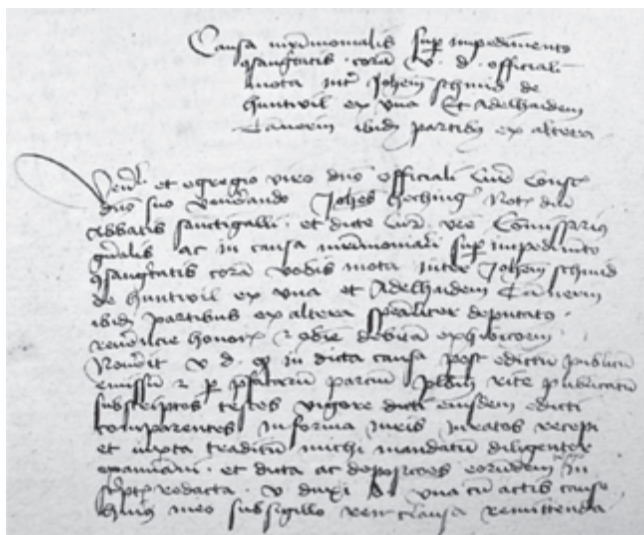


Figure 12.
Beginning of
the case Schmid,
Tanner. Hech-
inger Manual, BAC
Mappe 60, Blatt
22b.a

active in the building trade in St. Gall came to about sixteen to twenty pence at that time.⁵² Johann and Adelheid had evidently contracted their marriage against the will of their families. The secrecy of their actions also speaks for that, for the witnesses most closely related to them all endorsed a separation, which there was no way to avoid because of the clearly shown *consanguinitas*. Quite possibly, the members of the family themselves had informed the official of the irregular union that was also unacceptable to them. On the basis of the clear legal position, the judgment of the official decreed separation (*divortium*). Afterwards, on July 26, 1466, the couple successfully made a supplication in Rome for dispensation to remain married.⁵³ The free will of the couple had won out over the families' reason, thanks to the papal pardon.

In the second case recorded by Hechinger, the matter was far more complex, which cannot be seen from the scant supplication in the penitentiary register.⁵⁴ It has to do with the union between Hein-

52. *Sankt-Galler Geschichte* 2 (St. Gall, 2003), 48.

53. RPG 3.1713.

54. RPG 3.1716.

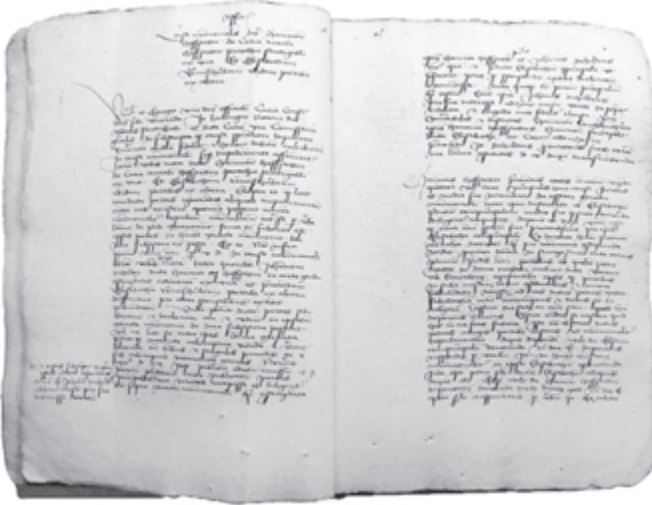


Figure 13. Case of Hoffstetter, Remishueberin. Hechinger Manual, BAC Mappe 60 Blatt 44–45.

rich Hofstetter and Elisabeth Remishueberin from the city of St. Gall. Elisabeth, twenty-one years old, had been engaged to Johann Inhelder, twenty years old, before her marriage to Heinrich, who was twenty-four years old at the time. A little later, however, she had decided against Johann and for Heinrich and had contracted a marriage contract *per verba de praesenti* with Heinrich before two witnesses without the knowledge of her father but had not consummated the marriage. Afterwards, the rumor spread that Johann and Heinrich were related by blood, which would mean that an impediment of public decorum existed. That was supposed to be looked into by the court, for Johann Inhelder apparently did not want to give up his former fiancée. On behalf of the Constance official, Zeller, Hechinger thus sent for fourteen witnesses on July 16, 1455, all from the city of St. Gall and aged 50 to 96 years old. From the profile they gave and other sources pertaining to St. Gall's history, one discovers that the bride must have been quite the catch. A net worth between 200 and 1000 pounds pence is mentioned. The outstanding social position of the participants can also be seen from the fact that the two

parties (Heinrich and Elisabeth on the one hand and Johannes on the other) were represented before the court by their own proctors, experienced notaries from the Lake Constance region, who certainly would have demanded no small honorarium. They were the proctors Heinrich Louchbuochler (Lochbühler) and Heinrich Fridtpolt, both of them legal advisors of the Constance court.⁵⁵

From the questioning of Heinrich Hofstetter, it becomes clear that he and Elisabeth had been "married" by a layman. According to the record, a certain Petrus Vetter had said to the pair, "Let the matter come before me" and urged them to make a marriage agreement. First he asked Heinrich, "Do you want Elsinen in marriage," to which he replied, "Yes." Then the question went to Elisabeth: "Elsi, do you also want Hainin Hofstetter through God in marriage?" She answered with a "yes," whereupon Petrus laid their right hands in one another "as a sign of the marital bond." For the time being, they did not tell Elisabeth's father about their union and also did not consummate it, above all because of the impediment between Heinrich and her earlier fiancée, Johannes Inhelder. Johannes had warned Heinrich with reference to his engagement with Elisabeth: "Dear Heinrich, you should not court her, for, if she wants to take a man, then she stands pledged to me on account of the engagement which previously was known between us."

One also discovers from the investigation of the witnesses that the bride's father first had to be won over for the new fiancé; for that reason his daughter kept her marriage pledge a secret from him. Only several weeks later did the father give his blessing. But Inhelder made it his aim to prove that his union with Elisabeth was in no way a mere engagement, so that he could make another marriage contract impossible. Heinrich and his bride had therefore instigated the legal process in order to obtain a decision from the official in their favor. On the basis of a foundational decision of Pope Boniface VIII,⁵⁶ the dissolution of an engagement prior to a sexual act was not difficult, even in the case of an impediment of public decorum. The couple

55. On Fridtpolt, HS 1.2.634ff. and REC 13307. Advocates had been provided as court representatives since the *Liber sextus* 1.3.1.

56. *Liber sextus* 4.1.1.

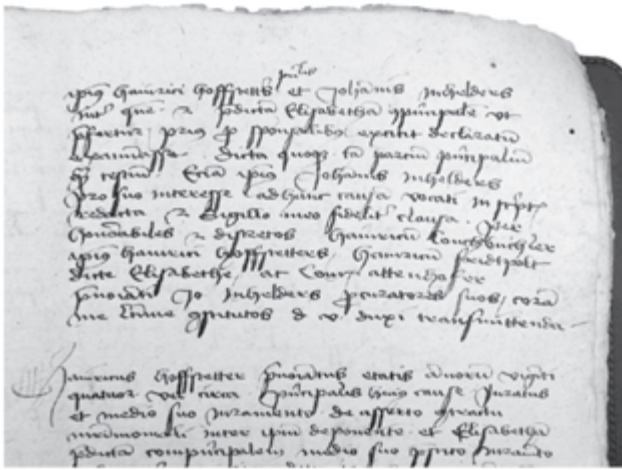


Figure 14. Heinrich Hofstetter's statement. Hechinger Manual, BAC Mappe 60, Blatt 45a.

could thus count on a positive judgment for them in Constance. The fact that Heinrich and Elisabeth, just two months after the interrogation of the witnesses and possibly before a final judgment by the official, requested a *littera declaratoria* in Rome, leads one to conclude that they feared that Johann Inhelder would for his part take the case further, whether to Mainz or to the Roman curia. Through the Roman letter, they gained the victory and could immediately consummate the marriage, especially since the penitentiary had not ordered any further investigation by the ordinary (as was otherwise common in such letters).

The statistical evaluation of the German marriage supplications in the penitentiary register has shown that most couples who had knowledge of an impediment between them had consummated their marriage without regard to the *impedimentum* before the pope had given them permission to do so. A contrary example stands in a record produced by Hechinger on May 24, 1458 in St. Gall.⁵⁷ The text refers to details of a process which Johannes Buochmüller and Margarete de Stachen from the Lake Constance parish of Arbon brought

57. BAC Mappe 60 Blatt 206–10.

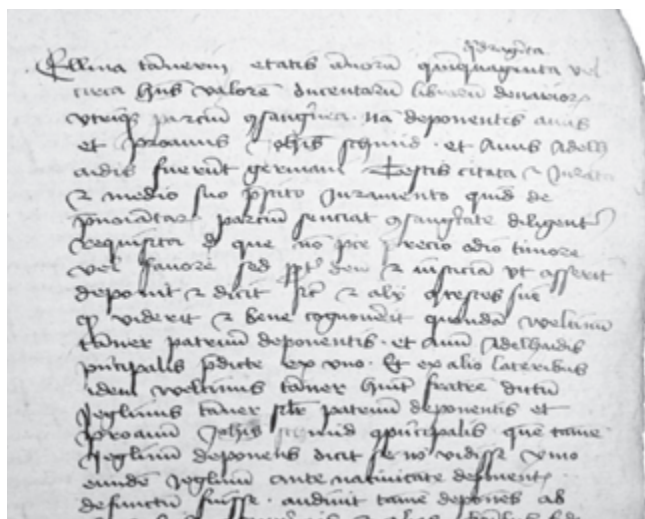


Figure 15.
Record of the
testimony of
Ellina Tannerin.
Hechinger Manu-
al, BAC Mappe 60
Blatt 27a.

at their own initiative in order to receive clarity from the official of Constance about an alleged consanguinity. They had in fact “contracted a marriage a long time ago but still put off the consummating act and the ecclesiastical celebration.” They were evidently both well off, for they employed the already named proctor Heinrich Louchbuchler and the Constance legal advisor Rudolph Mag as their representatives in the process.⁵⁸ At the end of his report, Hechinger complained that, despite the appeal made by the priest of Arbon on Lake Constance the Sunday after Ascension Sunday for witnesses to make themselves known to the marriage commissar, only Margarete’s parents and one other witness had testified before him.⁵⁹

According to his recorded statement, ten years before, thus in the year 1448, the thirty-year-old Johannes Buochmüller had begun to court Margarete, who was seventeen years old at the time, and, three

58. On Mag, REC 12004, 12139, 12424.

59. BAC Mappe 60 Blatt 206–10: “Et licet per plebanum in Arbona publicum sit edictum prima dominica post ascensionem domini tempore divinorum populi multitudine copiosa ibidem existente emissum et rite publicatum, tamen non comparuerunt plures testes nisi hi qui prescripti sunt.”

years before, had made a marriage proposal to her on the way back from a dance in Steinach on Lake Constance in her father's house.⁶⁰ With a view to the impediment of kinship, she gave him the following answer: "I want very much to take you in marriage. But it is a fact that we are related, and there would be a lot of gossip that you are such if my father gives me nothing." Afterwards, they took each other's hands and spoke the *verba de praesenti* in the customary form: "Do you want me through God for marriage?" The news of their marriage soon made the rounds, and it was also reported that they were related to one another by blood; for this reason they delayed the *sollemnisatio*. The marriage commissar wanted to know from Johannes "whether they had taken up the married life after the contract." The man answered this tricky question by saying that, because of the rumor of the impediment, they would not have dared to live together in full public view. Hechinger insisted; he wanted to know whether they had carried out the *copula carnalis* after the contract. The marriage commissar apparently suspected, not without reason, that the two had been carrying on a clandestine marriage for a long time. Johann answered "no" with many qualifications. He did admit, however, that he had occasionally gone to Margarete in secret "and had frequently engaged in the foreplay of love and coitus with her, and that was indeed libidinous in such a way that one could call these acts sexual."⁶¹ Under any and all circumstances, Johannes sought to avoid the understanding that they had already carried out the *copula carnalis* and thereby made their clandestine marriage indissoluble. Hechinger dug deeper: why had they not fully taken up "proper" sexual intercourse? Margarete had feared that a separation was imminent because of the blood relationship, Johannes replied. He had always assumed, however, that the impediment had "expired" and did not impede a marriage. Margarete concurred with his claims; both made a motion for the court to allow them to be married. The vote of Margarete's parents aimed in the opposite direction; they wanted to make

60. He stated that "se ante 10 annorum spacium primum per ipsam Margaretam provocationem incepisse" (BAC Mappe 60 Blatt 206–10).

61. Hechinger wrote in Latin, "opera preludea veneris et coitus cum ea sepe exercuerit adeo libidinose, quod verisimiliter ex huiusmodi libidinoso actu de carnali commercio presumat" (BAC Mappe 60 Blatt 206–10).

sure that the union was not permitted. Had Margarete and Johannes married clandestinely against the will of the bride's parents and were they to be separated now through an appeal to an impediment? Unfortunately Hechinger's records no longer contain the official's judgment.

Getting Married by Laymen

As shown in the case of Elisabeth and Heinrich Hofstetter, the contracting of a marriage could take place entirely without ecclesiastical involvement. In Hechinger's records, other examples of such "lay weddings" also occur. It lay completely in the hand of a couple to exchange the *verba de praesenti* before witnesses and then to commit the *copula carnalis* in order to establish a clandestine marriage but one that was hardly disputable legally speaking. Such a relationship would also have been theologically correct, for, according to the church's teaching, the married couple administered the sacrament and not the priest wedding them.

Henslin Kung from Hundwil in the Appenzell region, aged thirty-one, as a witness in a legal process brought between his nephew Heinrich and Elsina Tannerin in 1458, made the following statement:⁶² in 1457 the three of them had gone to Urnäsch for the patron saint's feast there, with which, as usual, a dance, a *chorea*, was affiliated, to which the unmarried youth flocked together. After the village festival, Heinrich and Elsina wanted to be married by him (Henslin). The record has Henslin speaking to Heinrich in the following way: "Heinz, you have asked me to give you to one another. If you ask me to do so again, I will do it." They did not delay long and immediately asked him to do so. The matter of factness with which Hechinger noted the occurrence lets one recognize that contracting a marriage in this way followed the usual practices everywhere at the time. Then Henslin posed the well-known question to the two: "Elsi, do you want Heinz through God for marriage?" and, in return, "Heinz, do you also want Elsi through God for marriage?" They answered "yes." For the Feast of St. Lawrence, on August 10, the three

62. BAC Mappe 60 Blatt 194–96 and 199–200.

of them met again in Herisau, where a dance festival was organized in honor of the city's patron saint. They repeated the wedding ceremony with the same words in the presence of other witnesses. Henslin knew, however, not to specify whether the marriage had also been physically consummated, or, better, he did not want to admit it.

And that was precisely the point that instigated the process. For, on the Thursday prior to the Sunday *Esto mihi* of the year 1458, in the house of Ueli Knechtli, Elsi had "married" another Ueli, Ueli Wuriner.⁶³ Here as well a "lay wedding" had taken place. On the following day, the couple went to Appenzell to her parish church, where they "were blessed kneeling before the altar" by a priest by the name of Johannes Mueller during Mass. In this way, as witnesses of the proceedings described it, "their marriage had been solemnized publicly (*matrimonium... publice erat sollemnissatum*) according to the customs of the land." A great mass of people had been present, they took part in a wedding banquet, and they drank to the bridal couple's health. Since that time, the two had lived as a married couple. Henslin stuck to his story, with the result that the marriage judge might have recognized Elsinä and Ueli, not Elsinä and Heinrich, as a married couple. The final judgment, however, does not appear in Hechinger's manual.

An especially touching scene of a "lay wedding" had taken place in Eppenwiler, in the bishopric of Constance. Heinrich Egger, twenty years old, and Engela Altherin, also around twenty years old, had fallen in love with each other with an undying love. "One Sunday about three weeks ago," as Hechinger summarized the man's statement on July 5, 1455, "Heinrich and Engela found themselves with a dance group in Eppenwiler and bantered about in the way lovers do" (*more amantium fabulantibus*). "A certain Gallus Sennhuser saw the happy couple and asked them, 'I can see that you love one another. What good can I add to that?' 'Yes, do something for us,' the couple answered. As a result, Gallus spoke the following words in the vernacular (*verba vulgaria*): 'Do you want one another through God for marriage?' to which they responded, 'Yes,' as if in one voice.

63. BAC Mappe 60 Blatt 38: "in domo sua Ulinus Knechtli ipsum Ulinum Wuriner et ream (=Elsina) matrimonialiter copulaverat."

Engela and Heinrich then gave each other their right hands in the intention of completing the marriage contract in this way. Gallus wished them luck and blessings, and they thanked him. From this hour on, Heinrich treated Engela as his legitimate wife, except that he did not sleep with her, and the report circulated that they were a married couple. Since, however, the rumor arose that a blood relationship existed between them, they had not celebrated their union before the church."⁶⁴

According to the sworn testimony of thirty-year-old Andreas Meggel from Appenzell, in 1456 Ulinus Wueriner and Ursula Naefin "got married" in a very similar fashion, this time "on the field before the town of Appenzell."⁶⁵ All three were on the way to a dance festival when Ulinus and Ursula said to each other, "If we want to take one another, then let us do so." Andreas then said to them, "Do you want to do it?"—"that is, contract a marriage," the recorder added in Latin—"then take each other's hand." When they had done this, Andreas first said to Ursula, "Ursula, if you want Ulinus for marriage, then say yes." She immediately answered, "Yes," after which he turned to the man: "Uli, if you also want Ursula for marriage, then say yes." He also said, "Yes." Once again we meet the apparently standard formula employed for a rightful contraction of marriage in the region around Lake Constance, only this time the invocation of God was left out.⁶⁶

How a Young Woman Was Seduced

Kunigunda Hueberin from the parish of Gossau near St. Gall, who in the summer of 1455 sued to have Othmar von Oberndorff awarded to her in marriage by the official in Constance, attempted to relate to the marriage commissar, Hechinger, a conversation that she had had with Othmar when he wanted to seduce her. "If you guarantee, Othmar, that I will not be your whore, but that you want to come to be as a man to his own wedded wife, then come." Othmar

64. BAC Mappe 60 Blatt 38.

65. BAC Mappe 60 Blatt 86.

66. Examples of lay marriages from the city council manuals of Zurich may be found in Arthur Bauhofer, "Zürich und die geistliche Gerichtsbarkeit," *Zeitschrift für Schweizerische Geschichte* 16 (1936), 26–29.

replied, "I have no desire for you to be my whore." Kunigunda said in return (translated from the Latin record): "If you dishonor me, I promise you, I will drag you to Constance on that count and sue for marriage, and if you should be acquitted, I will bring charges against you for defloration."⁶⁷ In addition to translating them into Latin, the marriage commissar also wrote the testimony in the record in the vernacular. There Kunigunda's words sound even livelier: "If you screw me over, I'll drag you to Constance; if you get out of the marriage, I'll still nail you with the defloration." After these words, Othmar grew alarmed and backed off, but, at his second try, "she gave in to him but in the intention of marrying." In contrast, Othmar frankly and freely admitted to have slept with Kunigunda only as his lover (*amasia*) and *fornicarie*; he had never promised to marry her.⁶⁸

If one follows the notes in Hechinger's manual, then one finds out that, in the greater region of St. Gall, in Gossau, Huntwil, Jonswil, or Appenzell, the young men were overwhelmingly interested in finding a woman with whom they could go to bed. The young women, however, stopped at nothing to wrest at least a pledge of marriage from the man before they got sexually involved with him. Nothing other than that had occurred between Dorothea Restembuehlin and Ulrich Talmann, who "went with each other" for five years.⁶⁹ When their relationship became public, the parish priest of Jonswil called them before him and gave them a dressing down: he would no longer admit them to communion before a definitive judgment of the Constance official had clarified whether a lawful marriage existed between them or not. On their own initiative, the couple sought out Hechinger, who questioned them and delivered the record to the official for a decision. The interrogation contains numerous noteworthy details that may also have been typical for other relationships of this kind.

Dorothea, aged twenty, portrayed the story of her relationship with bewildering openness, and Hechinger translated her words into

67. In Zurich the paternity suits before the municipal court were filed under the rubric "Mägtum und Blumen" ("Maidenhod and Flowers;" *ibid.*, 29ff.).

68. BAC Mappe 60 Blatt 58–59.

69. BAC Mappe 60 Blatt 103–5.

precise Latin. Five summers ago, she had fallen in love. One Sunday around the Feast of the Holy Virgin Margaret (the middle of July), Ulrich came to her in a garden near Jonswil where they were entirely alone. Dorothea reported about the defendant that he wanted to carry out the *copula carnalis* with her if she was still a virgin "and if he found her to be such through coitus and she had never had intercourse with another man."⁷⁰ If he determined that, then he wanted to do it again later." Dorothea admitted without reservation that she was so in love and had hoped that Ulrich would afterwards take her as his wife that "she let him take the flower of her virginity away." The following August, they had had sexual intercourse with each other again in another garden, because she trusted that he would marry her. A few days later, she continued, they met again, this time in the small wood "in Schachen" near Jonswil. This time she refused his demand; she wanted to give herself to him only "in marriage and in honor." As a result, Ulrich left her, and for half a year they had not seen each other anymore. Between Easter and Pentecost of the following year, they met again in the same woods. He again wanted the *copula carnalis*, but without the condition of a future marriage. Dorothea reportedly said to him, "You may do what you want; you know full well what I have spoken with you about." With those words, she had wanted to give him to understand that she only wanted "to give in to him in marriage and honor." In response, one could say that he raped her in the woods. There were no witnesses for her statements and also no rumors, for she had "laid all bare" only to her priest, namely in confession, and he could not break the seal of confession. Dorothea wanted to have Ulrich assigned as her legitimate husband by the court.

Her lover, Ulrich Talman from Jonswil, twenty-four years old, confirmed all of Dorothea's statements about what happened in the summer five years before, but he called into question whether she was still a virgin at their first encounter, most likely in order to avoid possibly having to pay the *Kranzgeld*. He came to the first tryst because he wanted to sleep with her *fornicarie*. He utterly denied ever

70. Ibid.: "inquantum virgo esset et in coitu reus (= Ulrich) ipsam (= Dorothea) virginem experiretur."

having expressed an intention to marry her. When she wished for such an assurance, he no longer came to her, and, in addition, at the last meeting in the woods, he had not had sexual intercourse with her. If she falsely claimed that the last meeting had also come to sexual intercourse, he suspected that "the plaintiff had been spurred on in her behavior by others with evil intent." If we accept Dorothea's statements as correct, Ulrich can only have meant by that the parish priest of Jonswil. Ulrich wanted to be set free from Dorothea's claims. At the end of his record composed on June 1, 1456, from which all the preceding facts have been taken, Hechinger reported to the official that Dorothea had appointed Heinrich Louchbuochler while Ulrich had appointed Rudolph Mag as their proctors.⁷¹ Unfortunately, here as well we lack the final decision of the official, but, given the situation, it could hardly have come out in Dorothea's favor. Probably she at least received a *Kranzgeld*.

How Much Was Virginity Worth?

As could be gathered in the conversation between Dorothea and Ulrich, virginity played an important role in the "marriage market" in the fifteenth century, as other witnesses presented here also testify. Both the officialate court and secular tribunals pursued and punished, as we have seen, men who seduced and deflowered girls with the help of a marriage pledge, which they then did not keep. Several suits in which young women wanted to receive at least a compensation for defloration from their seducers when the men refused to marry them also belong to the matters treated by the marriage judge commissar, Hechinger, in St. Gall. The *Kranzgeld* is tied in the records to the estimate of a dowry eluding the girl. In the bishopric of Constance as also elsewhere, the amount of such a payment depended on the social standing and the assets of the seducer or his father. In one notarial template drawn up by Hechinger found in his manual, Symon Amann, priest in Wydasshofen near Ravensburg, is certified as having paid Anna Hochenwarterin two gold Rhenish florins as a compensation for defloration. She then declared that all of

71. This proctor is also mentioned in BAC Mappe 60 Blatt 110.

her claims were thereby met.⁷² In early 1459, Ursula Laidrerin from St. Gall brought charges against Johannes Werlin in the same type of matter, and witnesses were in agreement in estimating that she “must have received at least twenty pounds in the coins common in the city;” that was more than twenty-five florins.⁷³ In a formula book in Chur from 1440, a compensation of five Rhenish florins was named for the loss of virginity. In 1471, the marriage judge Johannes Heller in Freising decreed that a Leonardus Kagermair had to pay Katharina de Fridberg seven Rhenish florins because he had taken her virginity away ten years before and had promised to marry her.⁷⁴ In his decisions in the same year (1471), he decreed payments of between six and fourteen pounds pence as *Kranzgeld*.⁷⁵

But substantially higher sums could also be involved. In 1471 the “honorable virgin” Klara, daughter of Heinrich Smidhamer from Gemünd in the diocese of Augsburg, stood in the service of the nobleman Heinrich von Freiburg. A certain Wolfgang Kluegkheimer from Landshut had wooed her, and, in the end, with a pledge of marriage, he “robbed her of the flower of her virginity.” In the Freising records about the *refusio virginalis honoris*, Klara claims to have a dowry of 400 Rhenish florins at her disposal.⁷⁶ She would not have been content with a settlement of a handful of coins as in the above-mentioned cases.

It seems that, around the turn of the sixteenth century, the penalty for defloration was increased considerably. For example, it amounted to at least ten florins in Basel, between thirteen and forty-five pounds pence in Constance, depending on the assets of the man as well as on the social position of the seduced woman. In the local diet’s statutes of the year 1523, Swiss citizens from the St. Gall region complained that the punishment for taking away a girl’s virginity now no longer came to ten but to eighty florins! In cases of defloration and marriage

72. BAC Mappe 60 Blatt 62–63: “in recompensam dotis seu sue virginitatis floris destitutionis.”

73. BAC Mappe 60 Blatt 222–23.

74. AEMF, Heckenstallersammlung 216 fols. 22v–23v: “refusio virginalis floris.”

75. AEMF, Heckenstallersammlung 216 fols. 93r, 173r, 200v: “ad refundendum honorem.”

76. AEMF, Heckenstallersammlung 216 fol. 58v.

pledges not kept, a man in the bishopric of Constance additionally had to pay two florins to the episcopal city's dome's masonry guild.⁷⁷ Spiritual as well as secular authorities were on the same wavelength when it came to efforts to carry out a consistent social program for sexual morals.

The Attempt to Win Back an Old Girlfriend

Walter Ruoff, from today's Austrian city of Feldkirch, could not forget his old girlfriend, Anna Gmunderin from St. Gall. In January 1457, when he asked the official of Constance to assign Anna to him as his legitimate wife, she had already been married to Ulrich Tunbach from the St. Gall region for roughly five years.⁷⁸ He nevertheless made the attempt to get back Anna, who came from a well-off house. In the summer of 1452 the two might still have been teenagers, Walter about nineteen and Anna sixteen years old. In any case, if one follows Hechinger's record, they were head over heels in love when one of Walter's uncles ordered his nephew from St. Gall back to Feldkirch because he wanted to give him in marriage there. Walter immediately reported the ominous news to his girlfriend. After five years, he still knew exactly where they had met in that moment, "in the new part of the city of St. Gall in the house of Frau Getzenwilerin."⁷⁹ The two lovers discussed their difficult situation at length. In the end, according to Walter's statements, Anna supposedly said the following words to him: "I ask you to promise me not to take any wife but me. Then I will also promise you not to take any man but you." After they had given each other this mutual pledge, Anna, Walter said, had also "received" him (by which he meant that she slept with him); she had not been afraid to make her parents angry. "They then went into the kitchen of the named house and comforted one another with hugs and kisses as lovers do."⁸⁰ During these

77. These numbers are according to Albert, *Der gemeine Mann*, 166, 172–73, 191, and 307.

78. BAC Mappe 60 Blatt 139–42. Albert, *Der gemeine Mann*, 169–70.

79. Ibid.: "Nunciata ree (= Anna) exposuit in quadam domo in opido Sancti Galli sita in novo vico 'der Getzenwilerin hus' nuncupata."

80. Ibid.: "partes ad coquinam predictae domus venientes ibidem consedentes mutuis amplexibus et basiis more amantium se refecerunt."

embraces, Anna had said to her Walter, "See now, it is vowed to God that I now have a claim to you." He had understood these words as an agreement to marriage. Afterwards, they departed from one another.

After a few days, Anna's father got wind of this story, and he seems to have become extraordinarily infuriated about it. As a result, Anna and Walter met in the crypt of St. Otmar's Church, where she tearfully reported to him her father's reaction. Walter suggested to her, "Let us get married right away; then your father will be well inclined to you again. Thus say to me 'if you want me through God for marriage, then say yes.'" Anna had immediately answered his question with "yes." In the same way, Anna had asked him, "Do you want me through God for marriage? Then say yes," to which Walter had also given his assent. Then Anna had given him two florins "in order to take care of what was necessary for a household." She had also asked him to work on her father through his relatives so that he would be reconciled to her again. They had not, however, Walter stressed, carried out the *copula carnalis*. To the question of the marriage commissar of why he had let five years pass before he had brought this process, Walter gave a somewhat cryptic answer. Because of an oath he had not dared to return earlier to St. Gall. Had he been banned from the city for a time?

According to Anna's witness statement, the affair with her St. Gall Romeo had gone on in substantially less dramatic fashion. Hechinger read Walter's words to her and translated them.⁸¹ He had portrayed their relationship correctly up to the meeting in the house of Frau Getzenwilerin. As for what had happened there, Walter had made it all up; everything was falsely stated. No kisses, then, and no hugs? Anna did not speak of that. It was true, however, that Walter, in view of the impending marriage at the hand of his uncle, had asked her to contract a marriage with him or at least to promise not to marry another. Anna supposedly replied that she did not want to promise him anything. Hechinger noted the words she then spoke in the vernacular: "I will promise you nothing; but if I want to take a man

81. BAC Mappe 60 Blatt 186 in another trial: "dictis articulis sibi expositis et wlgarisatis."

now, then I will have you as gladly as I would have another." The remainder of Walter's narrative was also incorrect. Her father had been angry because Walter had courted her so avidly. She had never promised to marry him, nor ever given him two florins, certainly not more than that, all of which he had made up. She had indeed fervently loved him (*satis ardentem*) but would never have married him against her father's will. In addition, there had been no rumor that the two were married. She made a motion to be released from Walter's claims. It is easy to see that, for the freshly married woman, the details of her love affair with Walter lying five years in her past were rather painful. Hechingen's record was entirely fair to the situation. And a positive judgment for Anna is hardly to be doubted.

Marriage Processes in the Bishopric of Chur

The Alpine bishopric of Chur was substantially smaller than that of Constance; it contained 165 parishes, thirty-four curates, and 247 chaplainries. In the second half of the fifteenth century, it found itself in a difficult crisis. Politically the bishops increasingly oriented themselves toward Austria, while the city, in an effort to receive the imperial advocacy, sought a connection with the emperor and, together with the League of God's House, strove for autonomy from the bishop and Austrian dukes. The break between bishop and cathedral chapter and between bishop and the League of God's House was complete from 1452. Heinrich von Hewen (1441–56), as bishop of Constance also the administrator of the heavily indebted bishopric of Chur; Ortlieb von Brandis (1458–91); another Heinrich von Hewen (Heinrich VI, 1491–1505); as well as the "anti-bishop" Heinrich Wismair (1456–58), who was supported by the Swiss Confederacy, were all capable prelates who had studied at universities (in part in Italy), energetically labored for spiritual reforms, and had an efficient administration at their disposal. The actual care of souls as well as the administering of the confirmation or consecration of churches and altars in large part, however, lay in the hands of their suffragan bishops, the Franciscan Johannes Nell (1459–67), the already-mentioned Dominican Burkhard Tubenflug (1471–76), the Minorite Daniel Zehnder (1477), and Johannes Theodorici (1479–88).

Heinrich VI von Hewen demonstrated great interest in marriage matters. Right after being raised to the episcopal see of Chur, he convened a diocesan synod whose statutes were largely modeled on the regulations of Constance. These contained many provisions on the problems of marriage. Sometime after 1494, Bishop Heinrich registered a supplication with Pope Alexander VI and had sought the authority to dispense married couples of his ecclesiastical district from all possible marriage impediments.⁸² Heinrich justified his supplication by explaining that many couples had gotten married in spite of an impediment of kinship between them, not knowing the canonical regulations, and, because of their poverty, could not afford to get dispensation in Rome. For this reason, the bishop asked to be able to absolve these couples in Chur, grant dispensation to them for the continuation of their marriage in spite of consanguinity or kinship by marriage in the third and fourth degree, and legitimize their children so that the well-being of their souls would not fall into danger and so that the women would not be defamed in the case of a separation. The Roman sources do not indicate how this supplication was answered. It is nevertheless true that the official of Chur carried out hundreds of marriage processes each year. The *debitorium generale*, a register of revenues of the episcopal seal-maker made between about 1495 and 1527, records fees for almost a thousand marriage processes. In twenty-five percent of the court cases, a marriage impediment was under consideration; suits for the awarding of a spouse in marriage made up sixty-five percent. Since an appeal by the parties to the apostolic see occurred in only two cases, one must assume that the dispensation could be obtained in Chur.⁸³ One could nevertheless be justified in doubting whether there was really so little recourse to Rome.

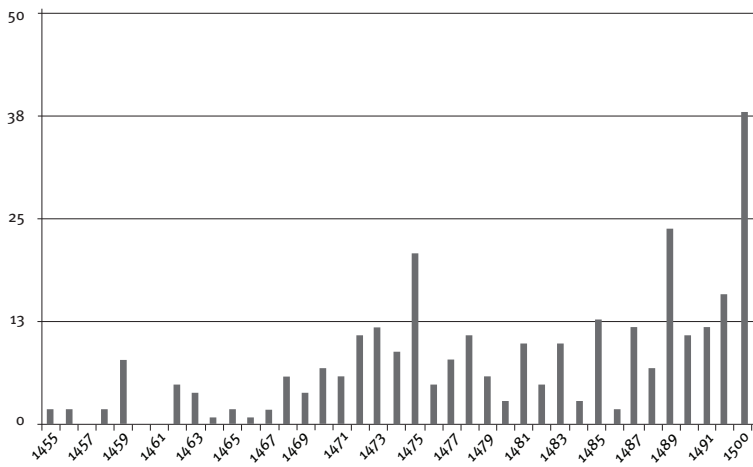
82. "Protokollbuch des Churer Domkapitels," ed. Oskar Vasella in idem, *Untersuchungen über die Bildungsverhältnisse im Bistum Chur mit besonderer Berücksichtigung des Klerus: Vom Ausgang des 13. Jahrhunderts bis um 1530* (62. Jahresbericht der Historisch-Antiquarischen Gesellschaft von Graubünden; Chur, 1932), 183–84.

83. Vasella speaks of "thousands of legal processes about engagements and marriages" in Chur between 1500 and 1520. Vasella, "Über das bischöfliche Archiv in Chur," *Archivalische Zeitschrift* 63 (1967), 59. Albert, *Der gemeine Mann*, 134, 151, and 173 gives the precise information. Immacolata Saulle-Hippenmeyer, *Nachbarschaft, Pfarrei und Gemeinde in Graubünden 1400–1600* (Quellen und Forschungen zur Bündner Geschichte 7; Chur 1997), 8ff. gives the names of the process participants and their payments.

Supplications to Rome from Chur

The words of Bishop Heinrich, who in the supplication to the pope just mentioned had rated the majority of the members of his diocese as being “back-woody and uneducated” (*quamplures rudes et iuris ignari . . . et quodammodo silvestres*), might have been a slight exaggeration. Canonical marriage law was not an unknown entity, even in the bishopric of Chur. After all, between 1455 and 1492, no fewer than 307 matrimonial dispensations for suppliants from this bishopric were issued in the penitentiary, quite a considerable sum for a small diocese. Each of the Roman processes had a back story before the official of Chur.

The two “runaways” in the graph are explained by the stream of pilgrims to Rome in the Holy Years. Nevertheless, why did twenty-four supplications reach the curia in 1489? What information can be gathered from the statistical analysis of the 307 supplications registered in Rome from Chur? First, the assessment that, on the basis of the “three-to-five-percent formula,” the total number of marriage cases handled before the official between 1455 and 1492 would come to between 160 and 270 per year. According to the penitentiary supplications, only ten percent (31) of the 307 couples from Chur had made an effort to receive dispensation in Rome prior to getting married, whereas 225 were already married at the time of their request for pardon. These couples had already consummated their marriage and had been brought up on charges because of a marriage impediment; eighteen of them had been separated by the official. Among the impediments to marriage, blood consanguinity predominated (158), while kinship by marriage (81), godparenthood (24), sponsorship at confirmation (4), and a few cases of *publica honestas* were named. The bishops and suffragan bishops obviously only rarely administered confirmation in the Chur valleys, which they did not visit often. Forty-nine couples admitted to having children already; 135 of the petitioning couples allegedly knew nothing of the *impedimentum* at the time of the marriage, while almost a third (95) knew of the impediment. The members of the diocese thus could not have been as back-woody as their Bishop Heinrich thought. According to



Graph 14. Penitentiary Supplications from Chur

the information of the supplications, only twenty couples had gotten married clandestinely, while more than twenty percent (67) got married *publice* or *in facie ecclesie*. The determination to live the married life despite notorious violations of valid canon law also manifested itself very clearly in the district of Chur. Of the couples, 172 asked the pope for the grace to be able to remain married in spite of an *impedimentum*, and 213 expressly pleaded in Rome for the legitimization of already existing or future children. It is also astonishing that in 30 of the cases, one of the partners had previously been married. A composition was imposed on 74 couples. As a rule they were related in the third degree of kinship and had deliberately violated canon law. The amount of the fine is known in only one case: Wilhelm, Count of Montfort, for the dispensation of his marriage to Meta, owed the papal datary ten camera florins, which was paid in Rome through the penitentiary proctor Adam Piscator, who came from Mainz.⁸⁴

What details can the local sources add to this picture? As already

84. RPG 5.724 and RG 9.6177.

noted, only fragmentary documents about the activity of the official's court survive in the episcopal archive in Chur. The situations portrayed in the few court records of Chur nevertheless allow a fascinating view into the colorful life and passionate love of young men and women from the bishopric between 1450 and 1500. The named couples are rarely older than twenty-five; the witnesses are as a rule old people, between forty and ninety years old. It is worth making at least a summary review of the individuals of the colorful court records.⁸⁵ Above all, they testify to the fact that the stories mentioned in the penitentiary supplications also came from daily life. As is to be expected, the majority of the processes deal with suits for the assigning of a spouse in marriage.

Instead of a *Kranzgeld*, 21 Liters of Wine

Margareta, daughter of Rugli Baetsch from Klosters, had brought charges against Ruedin Mueller from Kublis, twenty years old, before the officialate court in Chur.⁸⁶ On December 1, 1456, the ecclesiastical judge carried out the process in the absence of the defendant. The record fragment reports the following: in autumn of the previous year, Ruedin had begun a romantic relationship with Margareta, from which she became pregnant and bore a child. In the meantime, Ruedin had married another woman. Margareta testified that he had promised the world to her and assured her "he would take care of the child," but he apparently never promised to marry her. "Thus he would do with her as a poor but good lover and look out for the child and provide them with a house." That is what he promised her, but he did not keep his promise in the meantime, as the record added briefly in Latin. Margareta was not left with nothing; after all, Ruedin had had natural produce come her way through his father, "twenty-one liters of wine, ten pounds of lard, . . . and some meat as well as ten eggs." Margareta did not just want groceries from Ruedin, however; she also wanted money as compensation for pregnancy, birth, and rearing "according to the custom of the land" as well as a

85. All the cases presented in the following section are found in BAC Mappe 288, Consistory Acts 1456.

86. BAC Mappe 288 Blatt 1.

dowry. She was still a virgin when she got involved with him; moreover, Ruedin was well off, while her father was poor and had many children. The text breaks off here. Based on the customary practice in Chur, Margareta might also have received pecuniary reparation.

A Matchmaker with No Success

In another court record we come across Greta Martinutt, twenty years old, and her mother, Elisabeth, both from Brigels, whose behavior the court in Chur dealt with on February 4, 1457. Greta had brought suit before the marriage judge against Janutt, son of Balzett.⁸⁷ She was “poorer than Janutt,” the record says. Greta explained that the young man, of whom it only says that he was of marriageable age, had courted her for a year and wanted to go to bed with her, which she had consistently refused to do as long as they were not married. On St. Michael’s Day of the preceding year, on September 29, 1456, she had been together with Janutt in her father’s house, and “they lay next to one another for the whole night.” They had “exchanged affectionate embraces, but it did not come to sexual intercourse.”⁸⁸ In the course of the night, they had promised marriage to one another *per verba de praesenti*. “Jan, if you want me as a legitimate wife, say yes,” Greta said to him, and he answered, “Yes, God wills it.” Greta moreover stressed to the judge that neither on that night nor previously nor afterwards had she ever had a man. Instead she “was to that day a chaste, untouched virgin.” She asked the court to award her Janutt as her legitimate husband. In light of the alleged prudery of the Middle Ages, one might doubt this account of a night of love without “the act itself.” But in fact it was in no way uncommon for a couple to spend several hours or entire nights in bed together prior to marriage. A legal expert in a marriage process in 1465 between Barbara Löffelholz and Sigismund Stromer of the patriciate class of Nurnberg spoke of the practice of unmarried couples lying together “in all honor.”⁸⁹ If “petting” of that sort was common even in

87. BAC Mappe 288 Blatt 13–14.

88. Ibid.: “se mutuo affectis coniugalibus pertractabant preter carnalem copulam.”

89. Emil Reicke, “Der Liebes- und Ehehandel der Barbara Löffelholz, der

the circles of important citizens, then why not among the people at large, which indeed has already been mentioned in other places as well?

But back to Greta. Her statements were confirmed by her mother, who had been sworn in as a witness. Since she "suspected something," she paid close attention that night. The defendant had arrived at ten o'clock in the evening and wanted to go to bed with Greta, which she had rejected with these words: "You are rich, but I am poor. Tomorrow you will deny that you have pledged to marry me." Then, however, they had mutually pledged marriage to one another with the words that Greta had quoted in her statement. Afterwards, Jan got undressed, slipped into Greta's bed, and stayed there the whole night. The mother, Elisabeth, who seems to have been a skilled matchmaker, added the following report: Greta had always had to share her bed with a twelve-year-old boy (a younger brother). On that important evening, she had taken the boy out of the bed "so that Jan and Greta would have more room, which very much pleased them both." She had also laid it on the heart of the defendant that he should "conduct himself with decency." After events of that night, the defendant went to Greta's father "in order to reconcile himself to him," for he feared that he had offended him with his behavior. The father, in a timeless expression, had made Greta understand that, "as long as she ate his bread, she could not sleep with a man in his house."⁹⁰

How did Janutt, Greta's bed companion, conduct himself at court? He admitted to having courted Greta and having lain next to her that night, "but not as a naked person with another naked person."⁹¹ He had not had intercourse with the plaintiff or concluded any marriage contract. The witness Elisabeth (Greta's mother) had come to them and asked him what business he had there. Greta had answered for him, saying that her friend Netta knew full well. Janutt claimed that

Mutter Willibald Pirkheimers mit Sigmund Stromer zur goldenen Rose," *Mitteilungen des historischen Vereins für die Geschichte Nürnbergs* 18 (1908), 134–96. For this case, see now RG 9.3581.

90. BAC Mappe 288 Blatt 13–14: "quamdiu suum panem sumeret, nullatenus commiscere deberet in domo patris."

91. Ibid.: "concordat . . . ei coniacuisse, non tamen nudus cum nuda."

afterwards he had spoken with her father and told him that he had no intention of doing damage to his daughter in her honor or her possessions. Janutt wanted the court to free him from Greta's claims. After the reference to Netta, the official ordered that Netta, daughter of Duff Schmid, was to be heard as a witness *per commissionem*. Her statements are not preserved in the court record, but one finds in the consistory acts instead the letter of the priest of Brigels commissioned with the interrogation to the official. The priest summarizes briefly there the witness statement recorded by him: "Netta knew nothing of a marriage pledge between Greta and Janutt."⁹² The concluding notes in the record from February 17, 1457 confirm what could not have been but expected after the course of the proceedings. The mother's attempt to match her Greta with an apparently well-off young man had failed. The court acquitted the defendant.

In a Pasture in the Alps ...

On February 22, 1457, the officialate court of Chur dealt with the case of Cilia, aged twenty, daughter of Willi Raner, against Oswald, also aged twenty, son of Henslin Walther, who was out of town (*profugus a patria*, the record says). Both had made homes in the upper valley of St. Antönien in the Prättigau district, which had been settled by the Walser since the fourteenth century. As to pecuniary circumstances, the records say that the plaintiff was "poorer than Oswald." Cilia states that Oswald had already courted her for about a year and wanted to convince her to sleep with him. "They lived as peasants in the same place and often grazed livestock together."⁹³ Cilia added that she had always refused Oswald's requests, at least as long as he refused to promise to marry her. Oswald replied that he could not marry her at that time. "If she fulfilled his wishes, however, and let him have sexual intercourse with her and then she became pregnant,"⁹⁴ the record continues in the vernacular, "then I will have you, so that you and I are of benefit to one an-

92. BAC Mappe 288, Insets at Blatt 3 and 4.

93. Ibid.: "partes pecuda eorum mutuo pascebantur et in uno loco cohabitabant."

94. Ibid.: "sed quod suam implearet voluntatem et eum mitteret ad copulam, si per eum impregnaretur."

other and should have an heir, and I will name my son in the same house, and I will never leave you and will stay by your side, so that your son will have no shame or burden and you will indeed have gratitude afterwards to me." "After these words, she took him to bed as her legitimate husband as often as he wanted," the record continues. Around the Feast of Mary's Birth (September 8, 1456), Cilia came once more to doubt Oswald's upstanding character, and she refused to sleep with him from that point onward, but in the meantime she had become pregnant by Oswald. She asked the court to assign Oswald as her husband; otherwise she wanted "a dowry according to the custom of the land," for she had still been a virgin until her encounters with Oswald and was reputed to be such by all. Moreover, she demanded a compensation for the birth and alimony for the child.

The absent Oswald returned home only months later and appeared before the judge on Thursday, July 21, 1457 in the presence of a Magister Martinus, whom Cilia had employed as her proctor. "In a long speech," Oswald told how he had wooed Cilia since August 1456. He had gone to bed with her four times, but "she refused to let him in all the way." Only in September did "he convince her to let him in"—according to Oswald's statement, nevertheless, only the one time. Later Cilia had reproached him: "You are a rascal; you knocked me up and then got out of town." He replied that he would be of assistance: "Then I will properly help you in your confinement as a kind lover." With these kind words, "she allowed him to sleep with her again, but only one time." Oswald denied having given her a pledge of marriage, and, to the judge's question of whether he had deflowered her, he answered that "he feared she had already been a *corrupta*." In the fourth month of her pregnancy, he came to her again because of some neighborly issue; she denied that she was pregnant. Also he had not fled because of the legal process brought against him by Cilia but had left the village on February 2, 1457 out of poverty and because of dire hunger. He left in order to buy bread or grain for himself and his brother. Oswald asked to be absolved of Cilia's claims by the court, for he had never promised to marry her. The judge acquitted him but sentenced him, as was to be expected, to the usual fi-

nancial compensation. Because they had slept together (*ratione stupri*) and as a dowry (*donationem propter nuptias*), Oswald was sentenced to a payment of fifteen Haller pounds "in money or goods," which he had to pay to Cilia by the Feast of Gallus on October 16, 1457.

Seduced Maidens

The process that was dealt with on January 21, 1457 before the officialate court in Chur had to do with a maid who had been seduced by her master. Katharina from Trafas, aged twenty, without any assets, had hardly begun her service as a maid in the house of Flurin from the Prättigau district in the fall of 1456 when he harassed her to sleep with him. She expressed misgivings; she feared "for her honor and the scorn of her parents." Flurin sought to bring her around with the following speech repeated in the court record: "I have many friends; I will protect you from your friends." For the time being success was denied him. Afterwards he tried "with many sweet words and promises" and finally made the suggestion: "If it should happen to us that we have to go to Chur before the court, then I will take you in marriage." After that, Katharina gave in and went to bed with him "as with a legitimate husband" and thought to herself, "Maybe you do indeed have the good fortune that comes free." Afterwards, Flurin evidently could sleep with her as often as he wanted, although she continued to fear being cheated on and deceived. For this reason she determined to help her good fortune along a bit.

One Sunday evening Katharina and Flurin sat next to each other after dinner with two women and a man in Flurin's house when two men, Friedrich and Nutt, Katharina's brothers, entered the room and stationed themselves at the door. According to Katharina's statements in the record, a lively dialogue now developed between Flurin and her brothers. "Come on, Fluri. You have done something to us; we will also do something to you." Flurin got up and said, "I dare say I have nothing to do with her," pointing to Katharina. Friedrich answered, "We will make you suffer a long beating." Flurin replied, "If you want to do something nasty to me, at least spare me that." Friedrich then went up to Flurin and said, "You shall take her. If you

will take her, then it shall be so; if you will not take her, then say so," to which Flurin then countered, "Well then, perhaps I must do it." Friedrich swiftly placed Katharina and Flurin's hands in one another and "bound them in marriage *per verba de praesenti*." The plaintiff stressed to the court that the ceremony had taken place without threat and force and that the brothers also had not had any weapons with them. Besides her brothers, she had no witnesses, and she was pregnant. She proposed that the judge should assign Flurin to her as her legitimate husband or at least procure a dowry for her, since she "had been robbed of the flower of her virginity" and until Flurin's advances had been known as a chaste and modest girl.

Flurin, aged twenty-one and apparently not without some means, portrayed the purported events in his parlor somewhat differently. He did not deny the relationship with Katharina. His statements clearly boiled down to making her out to be easy and passing his marriage pledge off as forced. He stated for the record that Friedrich had entered the room with a sinister expression and shouted at him, "You whoring scoundrel, you have been wronging us for a long time." Flurin got up and answered, "What is it or what was it that I did?" Friedrich replied, "You have done plenty to us and done wrong by our sister; you must take her." Flurin had then attempted to leave the room, but Friedrich forcefully prevented him from doing so and threw him to the floor. Both brothers had then grabbed hold of him with one hand and, with the other, pointed a knife at him and threatened him, saying, "You have to take her or we will stick a knife into your heart and chop you into pieces." One reads further in the record that Flurin "feared for his life and would gladly have given the two brothers a thousand florins, if he had had the money at the time, in order to escape them." After that Friedrich had placed Flurin's and his sister's hands in one another. Flurin, however, knew not to specify what words he had said next. But he had "never consented to marry the plaintiff;" instead he had done everything to escape her brothers and save his life. The brothers would still have demanded that he confirm the contract with an oath, which he had refused to do, saying he would rather die, at which point Friedrich and Nutt, evidently out of fear of Flurin's friends, left the house.

Flurin denied ever having made a pledge to the plaintiff: "If it should happen to us, I will take you"—apparently he had been read Katharina's statement on the matter. He had also never promised marriage to her with other words. He could not say whether he had deflowered the plaintiff. A rumor was going around, however, that she had earlier been intimate with one of his relatives.⁹⁵ Flurin asked the court to question witnesses and acquit him of Katharina's charges.

How did the process go on? Both Flurin and Katharina employed proctors. The court followed Flurin's motion to interrogate witnesses. Heinrich Gesalf was sworn in and questioned as the first witness; he was one of the eyewitnesses of what happened in Flurin's parlor. We find out that he was about twenty years old, had liquid assets of twenty florins at his disposal, and was related to the plaintiff, Katharina, by blood in the third degree. Eight days prior, after dinner on Sunday, he was sitting with Flurin in the parlor and was ready to go to bed when the plaintiff's brothers, Friedrich and Nutt, came in and said to Flurin, "Stand up. It has to be; you must take her." They had grabbed Flurin by the arms and demanded that he clarify whether he would marry the plaintiff, adding, "If you take her, that is well and good." Ultimately, according to the opinion of the witness, Flurin had given in out of force and fear (*vi et metu*). The brothers placed his and Katharina's hands in each other's and spoke the already-cited words. The witness continued, saying that it became clear from the brothers' gestures and movements that they were threatening Flurin and perhaps would even have killed him if he had not "taken" the plaintiff. To the judge's question of whether the brothers had carried weapons, Heinrich answered that he had not noticed any spears, swords, or similar weapons, but they had brought along daggers, which apparently were common accessories for a man at that time. They had also made all possible verbal threats of death against Flurin and insisted that he should confirm the "contraction of the marriage" with an oath. He did not do that but made a pledge with the words, "All right." After that the brothers left, and Flurin also showed the plaintiff out of the house. By doing that,

95. BAC Mappe 60, Consistory Acts for 1457, vol. 1 Blatt: "allegat eam pregnantam per quendam suum consanguineum."

Flurin apparently wanted clearly to underscore that, after the compelled assent, he did not have sexual relations with Katharina again.

The witness statement of Friedrich, Katharina's twenty-year-old brother, is also recorded. For him, the first line of importance was his family's and his sister's honor. In the fall he had been in Glarus and, after his return, came to find out that Katharina was pregnant and "had evoked some scandal and made a fool of herself." For that reason, they came to the defendant's house on that evening. His brother remained outside while Friedrich entered the parlor. Flurin sat there clothed in only a shirt and jacket and immediately perceived what was going on. Friedrich greeted Flurin, saying, "God give you a good evening. Fluri, stand up; you must accept the maiden; you have wronged her. I am true to my word, you have wronged her as her lover." "After that, he grabbed Flurin by the hand," the record continues. "His brother, Nutt, came into the room, took Katharina's hand and united the two in marriage through *verba de praesentii*." Turning to Flurin, Friedrich said, "You must take her or do evil by her." Since Flurin did not want to explain himself, Nutt also pressured him with the words, "Now take her. We will not do anything to you, but tell me, will you take her or will you not? Just tell us." Both brothers repeated, "You have to take her. If you have wronged her, then she has been wronged and has you as a lover." Friedrich stated that he had not carried any weapons besides one long and one short knife, which he had not drawn. Flurin was supposed to confirm the marriage contract with an oath so that he could not deny the matter later. Flurin confirmed the contract only with a word of honor. After that, the brothers left the house. The older brother, Nutt, aged twenty-five, went on the record before the court that he agreed with Friedrich's statements. He also stressed that he had not directed any threats toward Flurin. Before entering the parlor, he and his brother had agreed not to use any force, even in the case that Flurin did not want to marry Katharina. He had explicitly told Flurin, "My dear Fluri, if you prefer to take her, then take her; if you do not want to do so, then we will complain to your friends. You have good friends, and we will not irritate them." Based on these words, it is possible that Flurin possessed a higher social position than Katharina's family.

Given the situation, Katharina had only a mere trifle of a chance to have Flurin awarded her as her legitimate husband by the official court. The court followed the argumentation of Flurin's party with the verbatim quotation of the relevant decretal, "Marriages may only be contracted of one's own free will" (X 4.1.29). Quoting canon law again, the judge acknowledged as proven that Flurin had acted under compulsion and fear (*vis et metus*), "which could even overcome a brave man."⁹⁶ On February 4, 1457, after consultation with "experts," the official freed Flurin to marry another woman. The question of a dowry remained open. Katharina's claim to such was undisputed. Within two weeks Flurin and the plaintiff were to come to an agreement about the *Kranzgeld* and the dowry. He would also have had to pay the costs of the legal process for her. At least in view of the material aspects, Katharina did not come out empty-handed from the official's court in Chur.

Suits about the existence of a marriage could never be decided in the positive by the official if an impediment of kinship existed, as becomes clear from the next example. On February 25, 1457, Verena Puntinger, aged seventeen, and Martin Rotmund, aged twenty-two, stood as accuser and accused before the marriage judge of Chur.⁹⁷ She wanted to have him awarded as her rightful husband and cited a long exchange in the vernacular which had gone on between them and in which he had promised to wed her. Martin denied ever having had the intention of marrying Verena; he also had not lusted after her outside of marriage and had never slept with her," especially since she was related to him in the fourth degree. With the argument of a marriage impediment existing between them, Martin could have Verena's suit dismissed elegantly and securely. The court heard witnesses on this point, Lorentz Gampler, aged sixty, and Harti, aged fifty. On March 17, 1457, after these witnesses had confirmed the degree of kinship, the marriage judge decided that Verena and Martin could not marry because of the consanguinity in the fourth degree and were free for other unions.

96. The decretals X 1.40.4 and 4.1.15 were also brought to bear in other places, for example BAC Mappe 60, Consistory Acts for 1457, vol. 1, Blatt 26 and 27.

97. BAC Mappe 60, Consistory Acts for 1457, vol. 1, Blatt 1-3.

The court record contains an unusual exchange in which, this time, it was a man who asked the court to assign a spouse. Anna, daughter of Ulrich Haelstab, aged twenty, worked as a servant for Henslin Inderoyen in Klosters in the Prättigau district.⁹⁸ One day, the tailor Hans Burner saw her in Henslin's house. He liked Anna very much and told the "polite virgin" that he would like to have her. Anna answered, "Hans, if you want me lawfully for marriage, then say yes." Hans said "yes" and added, "Anna, God give us good fortune; you are my married wife," and she answered, "Yes, so it is." Hans later gave her a ring as an engagement present (*subarravit*). But then Anna had second thoughts: "If my father were to find out that I have taken you, he will cut off my head." She therefore convinced Hans "to ask for her as a wife from her father through other honorable individuals." Anna's father, however, did not want to give his approval to a marriage with a tailor. Hans thus asked the court to decide that Anna was his legitimate wife. With the usual oath, Anna confirmed that she had not given him any pledge of marriage. Rather, Hans had said to her the following: "Virgin, do you want God for marriage?" Anna was surprised at this peculiar marriage proposal, went to the wife of her employee, and asked her, "Godmother Greta, how can it be a marriage—God for marriage?" In fact, Hans seems to have wanted to use the classic formula for a marriage proposal *per verba de praesenti*, the formula cited on many occasions in the manual of the marriage judge Hechinger and recognized as valid in the Alemannian linguistic region, which said, "Do you want me for marriage through God?"⁹⁹ She affirmed to the judge that she had never had the intention to marry Hans. She did not love him at all; in fact, she detested him. Anna also denied ever having received a ring from Hans. In light of the situation, the court could not decide in any other way than to refuse Hans's request. Men could also leave court empty-handed.

Positive judgments in cases involving the assigning of spouses were rare in all processes at officialate courts. One such judgment by the judge in Chur did occur on April 27, 1457 in favor of the plain-

98. BAC Mappe 60, Consistory Acts for 1457, vol. 1, Blatt 4–5.

99. Hechinger's manual, BAC Mappe 60 Blatt 2, 11, 65, and 111.

tiff, Agata Tschellin from Vals in the Rhine Valley.¹⁰⁰ She had dragged Martin Toentz, a bachelor, before the court, which had already dealt with her suit on March 23 in the absence of the defendant. She had hardly begun to serve as a maid in Martin's house when he, after just two weeks, she claimed, urged her to go to bed with him. Agata refused, for she feared "losing the honor of her virginity." Her brothers and an uncle named Jaeckli Hubert warned Martin, "See to it that you hold our sister in honor and do not do wrong by her." But all the warnings did not help at all. Besides, she was a poor girl and hoped for a good catch, or at least a dowry. When Martin promised to marry her, at the latest in the event of childbirth, she gave in and offered her virginity to him "as to her legitimate husband." She became pregnant and gave birth to a child. Later confronted under oath by the court with Agata's statements, Martin did not disavow his relationship with her and admitted being the child's father. He claimed to have reproached her, saying, "How are you setting yourself up? You want to position yourself and obtain so many children for yourself that perhaps I will take you and must perhaps take you." She had constantly conceded in resignation, "You will not take me." At the beginning of their affair, on the first night together, he had not had intercourse with her; on the second, when he asked her whether he "could lie with her," she agreed with the words, "Lie as you wish." He also confessed to the judge that "it was repugnant to him to marry the plaintiff." As for the loss of her virginity, "he believed her, for he had himself noticed it."¹⁰¹ In such situations, the spiritual courts in all the German dioceses were accustomed to offer the defendant two alternatives: "marriage or a dowry as well as a material compensation for the child according to the custom of the land." This judgment also came out this way, and thus Agata would have received at least a financial compensation from Martin and at most a legitimate husband.

Escape over the Roof

The next record from the archives in Chur speaks not of broken marriage promises, *Kranzgeld*, or alimony but of an affair after a

100. BAC Mappe 60, Consistory Acts for 1457, vol. 1, Blatt 5–6.

101. Ibid.: "ratione deflorationis credit actrici, quia ipse agnoverat."

separation from table and bed. Petrus Wagner von Ruggaell on the Eschenberg mountain, today in Lichtenstein, and Anna Sturmin had been separated (*divortiati*) by an ecclesiastical judge because of a too-close relationship by marriage (*affinitas*). On January 24, 1457, Petrus brought charges against Anna before the marriage judge, for she was living with a Mr. Ludovicus and had sexual intercourse with him. The ecclesiastical separation did not dissolve a marriage; it separated a couple and forbade the partners from other sexual contacts. Moreover, Petrus reported another fling by his wife, who was now living separated from him. On the Thursday after the Feast of the Holy Innocents (on December 28, 1456), between nine and ten o'clock at night, he had wanted to visit Anna and found her bedroom locked. He wanted to be let in, which she refused. She had a visitor, not the above-mentioned Ludwig but a servant by the name of Michael Stampf. Petrus supposedly heard how the two were whispering to each other. Anna opened the door only after the alleged adulterer had fled out the window or over the balcony. Petrus claimed to have seen how he disappeared over the roof, "clothed only with a shirt and jacket." When her visitor had fled, Anna finally opened the door, and Petrus found Michael's *planium* (a type of dagger) and shoes still next to the bed. Three days later Anna admitted to having let Michael in by giving him the key. She also confessed that he had already been with her several times before she and Petrus had made a *concordia*. Anna also reportedly said to Petrus, "You should prefer it to be so," which the record filled out with "that Michael escaped in this way, for, if you had come in more quickly, he would have pierced you through with a sword." Petrus made a motion for the following witnesses to be heard, Mr. Ludwig Fruwalt *de concordia*, Wind sin stuffwaecher *de invasione adulterii*, as well as Hug Meszner and Claus Reschli *super concordia*. Petrus asked the court for a definitive judgment for separation from table and bed because of adultery as well as for the restitution of his goods that had been squandered by Anna. She should also bear the costs of the legal process. Anna denied the adultery to the judge. She asked for separation from Petrus, for she feared for her life and no longer wanted to be burdened by him in the future. She further claimed to have given back all of

Peter's things to him and requested a confirmation of the *divortium* already issued earlier. Because of the lack of additional notes in the record on this dispute, one cannot clarify further the background to the case, which apparently had to do in the first place with the property of the divorced couple. They were after all already separated by the time this phase of the case began.

A Father Forces His Daughter into Bigamy

The marriage judge of Chur had to decide a case of bigamy on May 4, 1457. Anna, aged twenty, daughter of Baetsch Suter von Valtzen, had married Oswald Toeni *per verba de praesenti* against her will about five years before, even though she had previously contracted a marriage, also *per verba de praesenti*, with Hans, the son of Caspar Gampadael from Zernecz. One finds out from the notes in the record that her father had forced her into the second marriage despite the fact that he knew about the earlier marriage. To be specific, the father had heard a rumor that Hans went to live with another woman, Ursula, daughter of Hans Lutenschlager, who now lived in the Rhine Valley. Anna claimed that it was well known by all that she and Hans were a married couple, but they had not yet consummated the marriage or observed the ecclesiastical *sollemnisatio*. She nevertheless loved Hans "without end." During the past five years, Anna had lived for two years with Oswald, but always against her will and in sadness, for she had indeed married someone else before. She did not want to continue living with Oswald and "thus requested separation from him," since she had never agreed to the union with him. Both Anna and Hans named other individuals who could confirm their marriage, namely Heini Walsz and his sons as well as Claus Simonis's wife.

What did Oswald from Janatz say to this? He confirmed Anna's statements before the court. They had lived together for the majority of the past five years. He also admitted having heard a rumor that Anna had previously had Hans as her husband. But he had not attached any importance to that report because Hans "had the reputation of being an unstable, free-living man who got his thrills pursuing young girls." When Oswald and Anna contracted their marriage,

Hans was shut up in Anna's father's house so that he could not make an objection. From that, the noteworthy statement of Anna becomes understandable: "He had been bound up in a cellar." Later Oswald regretted having married Anna, especially since an impediment of a relationship by marriage in the third degree stood between them. He asked to have witnesses questioned about that. The other man in the mysterious *pas de trois*, Hans, son of Caspar, "was thirty-five years old and had a speech impediment" (*deffectum habet in loquela*), was questioned under oath by the court on June 12. He claimed "to have contracted a marriage many years ago with Anna, who at the time was a virgin of roughly ten years of age (!), but not to have consummated it." He and Anna were related by blood in the fourth degree. At the time of the contract with Oswald, he was in the house, but Anna's family did not want to accept him as Anna's husband, because of the named impediment. Hans did not want to make any claims to Anna as his wife because "his brother Caspar had also had sexual relations with her, which he had seen twice." Insofar as one wants to give credence to the somewhat chaotic report, it seems that Anna's father had made an effort to break his daughter's association with a somewhat notorious companion who, in addition, seems to have been handicapped but with whom she was "smitten," and to arrange a wedding with Oswald. We do not know the judgment in Chur, but very probably the judge had released all three of any obligations, for no valid marriage could have existed either between Anna and Hans or between her and Oswald.

To Marry or Stay Single Forever

Another process in the source fragments in Chur, this one brought by Anna, daughter of Risch von Furn, against Johannes Wellenberg from the parish of Grütingen, ended in a judicial declaration of annulment pronounced on May 31, 1457.¹⁰² At the beginning of 1457, Anna and Hans Kaisz von Haldenstein had entered the state of marriage *per verba de praesenti*. The words of their marriage contract are quoted exactly in the court record: "Anna, if you want me through

102. BAC Mappe 60, Consistory Acts for 1457, vol. 1, Blatt 9.

God for marriage and as your husband, then say yes;" "Hans, if you want me through God for marriage and as your wife, then say yes." After Hans and Anna had exchanged these words, she permitted him the *copula carnalis* "as her legitimate husband" as often as he wanted, and Hans gave his wife a ring. This union would have been able to have been recognized by the church without any problem were it not for the fact that, probably during the ecclesiastical banns of marriage, her earlier union with Johannes Wellenberg became an issue. More than eight years before, he had pledged to marry Anna and also received her father's blessing. After the latter's agreement, Johannes and Anna had "laid together for four nights as a legitimate couple," during which time Johannes "robbed Anna of the flower of her virginity." "After two or three months," Anna explained in detail according to the record, "Johannes brought me up on charges before the ecclesiastical judge for no apparent reason and obtained a *divortium* by denying his earlier promises and construing them as a mere *sponsalia* (betrothal), even though I produced many witnesses for a marriage *per verba de praesenti*." Later Wellenberg told her "he had taken another wife." The court had indeed enjoined Johannes and Anna not to marry others. The statement of a witness, Claus, from May 18 can only be interpreted in this way, that Johannes and Anna had come to an arrangement. Anna had explicitly said to the witness, "He did an evil thing to me if afterwards I cannot take another man, all the while he lives, as he then tells me, single or takes another wife." After Johannes had done just that, Anna and Hans Kaisz consummated their marriage without delay. They asked the court for confirmation that they were married and could solemnize (*solempnizare*) the marriage in the church. As already said, the marriage court in Chur granted them this permission.

As is evident from the judgment of the judge in Chur in a comparable process, in cases where proof was unclear but there was a long-standing relationship in which, in most cases, the man denied any intention to marry but admitted having had sexual intercourse, it was the common practice of the marriage court to forbid the partners from marrying another woman or man. The court instructed Amalia Blygam from Meyls, who served in the house of a certain Clewlin,

and Hanslin Kroepfli in this way.¹⁰³ They had had a relationship for more than two years, during which time Hanslin also pursued other women and denied ever having wanted to marry her. At the end of the plaintiff and defendant's statements, the registrar noted, "The main persons involved do not agree on much." The judgment said, "In the name of Christ . . . we decide that the defendant may not enter into a marriage with any other woman besides the plaintiff."¹⁰⁴

From Chur to Rome

We owe all the information on the marriage processes named up to this point to a fragment of the register of the officialate court in Chur, a slight volume out of the so-called consistory acts. We learn nothing about the above-mentioned processes from the Vatican sources in Rome. No canonical reason existed for the penitentiary to be approached. Only in one process in Chur do the local sources coincide with the Roman. We learn from a short supplication in the penitentiary register of Pope Calixtus III of February 9, 1458 that Jaecklin Contzett, a layman from the diocese of Chur, had at some point had sexual intercourse multiple times with Anna Pertigalin. He later contracted a marriage *per verba de praesenti* with Cristina von Prättigau, also from the diocese of Chur, and consummated it through the *copula carnalis*. Why did his case appear in the penitentiary? At the time he had not known that Anna, his earlier lover, and Cristina were related by blood in the fourth degree. He thus asked the pope after the fact for dispensation to be able to continue his marriage with Cristina. The major penitentiary Domenico Capranica approved Jaecklin's request with a *fiat de speciali*.¹⁰⁵ Additional information emerges from the Chur consistory acts; details not preserved in the Roman supplication about the long relationship, which was unpleasant for Anna, indeed come to light there.¹⁰⁶

On January 1, 1457, the official had dealt with a suit by Anna,

103. BAC Mappe 60, Consistory Acts for 1457, vol. 1, Blatt 24 and 25, judgment at the very bottom of Blatt 25.

104. Ibid.: "Christi nomine invocato . . . definimus reum cum actrice et nulla alia muliere ipsa vivente debere contrahere."

105. RPG 3.1946.

106. BAC Mappe 288, Blatt 3–6, record and judgment.

daughter of Pertigal, aged twenty-two, from Jenaz against Jaecklin Concett from Schiers, the main town of the Prättigau district. Jaecklin's age is not noted. Anna is assessed as "not wealthy and living by the work of her hands." After being sworn in, she went on the record as follows: More than two years before (thus before the year 1455), when she stood in the service of the parish priest of Schiers, Jos Burkard, as a maid, Jaecklin had urged her on several occasions to sleep with him. She only wanted to agree "if it happened honorably and he would marry her." After Jaecklin had promised not to take any wife other than her, Anna gave herself to him as often as he wanted "as if he were her legitimate husband." She became pregnant. A child came into the world in August 1455, but died just four weeks later. The defendant had also had intercourse with her after that and repeated his promises to marry only her. In addition, he promised her a dress, which she had never received. In July 1456, Jaecklin had married another woman, by the name of Cristina, who was related to Anna by blood in the fourth degree. When Anna got wind of his intention to marry, she tried to prevent it by claiming that Jaecklin was her husband. She said to Cristina, "Do not take him. He is my husband; I will not leave him free for you." Cristina replied that she would marry Jaecklin all the same, "that she would do it in spite of her." The defendant had then married and done so secretly. Only later had the two made the wedding public. Anna had not been able to prevent it, even though she went to the priest, perhaps to the one in Schiers, her employer, and insisted that the two were not to be wed before an ecclesiastical judge made a judgment, for Jaecklin was her husband.¹⁰⁷ Anna had apparently already initiated a suit with the official to have her marriage confirmed. Even so, the priest married Cristina and Jaecklin because, so he argued, no one could prevent their marriage without a judicial decree.¹⁰⁸ Anna could not name any witnesses in her favor to the official besides the defendant and his wife. She asked the court to award Jaecklin to her as her legitimate husband.

107. *Ibid.*: "deponens accessit plebanum instando apud eum, ut non coniungeret partes, quia esset suus maritus et quousque fieret declaratio per iudicem ecclesiasticum."

108. *Ibid.*: "dixit enim non posse impedire matrimonium inter partes nisi haberet speciale mandatum iudicis."

If we get a less than positive picture of Jaecklin's conduct from Anna's statements, the story looks entirely different from his perspective in the record. The defendant did not deny having had intercourse with Anna, but he supposedly never pledged to marry her. "I did not do it; you knew full well how things stood before with you," he is quoted as saying in the record. Anna supposedly had other men as well afterwards. "But you wanted to behave that way; I am not making it up. But I did not want to be bound to you." In response to Anna's reproaches that, after the birth of the child, he had intercourse with her again and gave her renewed hopes for a marriage, Jaecklin did not deny the sex but did deny the promises. It was correct that he had promised her clothing, but only "if she conducted herself with decency." Anna had also already been pregnant previously, that time by his brother-in-law. He also denied that Anna had claimed him as her husband, yet he admitted that he had gotten married secretly. He had heard from someone else that Anna wanted to prevent his wedding. He knew nothing of an impediment on the basis of family ties between Anna and Cristina. Jaecklin asked the court to free him of any obligation to Anna. He evidently aimed to portray Anna as a "loose girl."

As the process continued, the judge had witnesses interrogated on the question of a possible marriage impediment: Henslin Ver von Zitzers, the wife of Caspar Beltzers, aged fifty; a sister of Hensli Pertigal; and Hensli Pertigal himself, Anna's father, also aged fifty. The latter stated that his daughter was related by blood to Cristina, Jaecklin's wife, in the fourth degree, and gave specific information about the familial connections. Henslin Ver, also around fifty years old, as well as other witnesses confirmed the information from Hensli Pertigal. On the basis of these statements, the registrar sketched a family tree of the two women. A note on the same folio states that the process was still not concluded because the question of whether the marriage (between Jaecklin and Cristina) had been contracted lawfully involved an impediment of consanguinity. That could only be decided in Rome, not in Chur.

In this case we also know the judgment; it stands at the top of the following folio, which begins with the common invocation *Chris-*

ti nomine invocato ... and has the following wording: "According to what we have seen and heard in court, we acquit the defendant of the claims of the plaintiff. We nonetheless declare that Cristina and Jaecklin may not remain in their marriage licitly without permission from the apostolic see. Until they receive this license, we forbid them from sleeping together in marriage and oblige the parish priest and Cristina to ensure that Jaecklin pay the usual reparation on account of the preceding matter [that is, with Anna]."¹⁰⁹ Anna had thus attained what there was to attain. Since she could not produce any witnesses, the recognition of her relationship with Jaecklin as a rightful marriage failed. Despite the frequent sexual intercourse, Anna was not in a position to prove that Jaecklin had made a declaration of intent that would have been necessary for a clandestine marriage. Perhaps she had not brought charges on that front seriously but rather wanted merely to force her former lover to pay up. On the basis of the judgment in Chur, she could have at least received a financial compensation for the birth of her child, who died shortly thereafter. Returning again to the register of the penitentiary: Cristina and Jaecklin received dispensation for their marriage from Rome on February 9, 1458. If we possessed only this text and not the court records in Chur as well, the entire, exciting story of this *pas de trois* would have remained hidden.

Marriage Processes in Other German Bishoprics

In individual cases for the bishoprics of Constance and Chur, we were able to connect the penitentiary supplications with the local sources. In the dioceses that are presented in the next section, this possibility does not exist in the same measure, for either their acts for marriage processes from the second half of the fifteenth century

109. *Ibid.*, p. 6: "ex hiis que vidimus et coram nobis in iudicium audita sunt reum in foro contentioso ab impetratione actricis fore absolvendum et absolvimus. Nichilominus declaramus Cristinam et Jaecklin predictos non posse in matrimonio per eos contracto absque licentia sedis apostolice licite permanere, quibus sub divini iudicii obtestatione commixtionem carnalem interdiciamus quousque huiusmodi licentiam meruerint obtinere imponentes tam plebano quam Cristine, ut Jacklino premissorum occasione canonicam emendam ..." (the final words are missing).

are no longer extant in their archives or, if extant, any overlap with the penitentiary supplications is not apparent. For this reason, I will here make a brief analysis of the supplications registered in Rome and point out local differences.

Basel

The bishopric of Basel covered no greater an area than the district of Chur, but it was substantially more densely populated. In 1500 there were possibly as many as 420 parishes in this region. City and bishopric had profited enormously from the long council (1431–49), the foundation of the university in 1460, and the book press testified to in Basel since 1471. The bishops Johann von Venningen (1458) and Kaspar zu Rhein (1479–1502) were responsible for successful administrative reforms, although the bishops could not hold back the city's efforts for autonomy. The tasks of the vicar general and the official experienced an adjustment in 1484 in the *Statuta curiae Basiliensis*; the official had the duty of carrying out marriage processes.

For six years, between 1463 and 1469, summary sources exist in Basel on these processes. In this period, the official dealt with 349 marriage processes, of which 14 were due to an impediment of kinship and 28 were due to impotence. As in other dioceses, so also in Basel, suits seeking to have a spouse assigned stood at the top, with 216 cases.¹¹⁰ Women and men come out almost evenly as plaintiffs. How strongly marriage cases predominated in the court's activities is shown from the fact that, in the period in question, only 82 other legal cases were handled before the officialate court in Basel. For the above-named years, perhaps one could make a statistical comparison of marriage processes based on the penitentiary register. But our hopes are disappointed, because, during the years 1463 to 1469 only a single matrimonial supplication from Basel was registered in Rome, while other requests for pardon from the diocese are not lacking in the register.¹¹¹ That requires an explanation, for in actuality at

110. Albert, *Der gemeine Mann*, 164 and 195. The case described in n. 286 about Nesa deals with an *affinitas superveniens* along with a simultaneous violation of *publica honestas*.

111. On the Basel marriage processes, Albert, *Der gemeine Mann*, 163, 195, 208, and 271; on the costs and penal fines, *ibid.*, 218.

least fourteen processes, those dealing with an impediment of kinship, could only have been decided in Rome.

If only a single marriage dispensation between 1463 and 1469 and no more than 61 total marriage dispensations between 1455 and 1492 were registered in Rome for supplicants from the bishopric of Basel, there must have been another way on the knee of the Rhine for coming into possession of such a dispensation. Bishop Johann von Venningen, who possessed a special relationship with Pius II, probably received from him the authority (*facultas*) to dispense the members of his diocese from impediments of kinship. That appears to have happened after June 1463, for on June 24, dispensation for consanguinity in the fourth degree still went through the penitentiary, but then there is no other marriage dispensation for Basel until 1470.¹¹² Other powers were in any case handed over to the bishop because, at the intervention of the papal chamberlain and very influential cleric in Basel, Werner von Flachsland, Bishop Johann had, on April 13, 1463, received the rights reserved to the pope to issue "butter letters" (letters permitting the usage of the usually forbidden butter instead of oil during Lent) in the future and to approve portable altars.¹¹³ In fact, couples in Basel could marry in spite of an impediment based on kinship, if they obtained an episcopal dispensation for one pound, five shillings. It was indeed for this reason that in the years 1463 to 1470, no marriage dispensation occurred for Basel supplicants in the camera or chancery either. Why supplications later went to Rome again still requires a careful investigation. It is conceivable that, as was common in other instances as well, the episcopal *facultas* had been granted only for a specific period of time. Four of the requests handled in the chancery in 1470 and 1471 concerned a *cognatio spiritualis* from which the bishop apparently could not make a dispensation.¹¹⁴ Two other supplications from Basel appear in the register of the penitentiary of Paul II. One relates to the marriage of a couple that had lived in adultery for years and later

112. RPG 4.695. Seven other supplications from Basel come from earlier years: RPG 4.60, 182, 386, 424, 457, 582, and 584.

113. RG 8.394 and 2832.

114. RG 9.1015, 2119, 3261, and 5433. In the last two cases, a composition of ten camera florins had to be paid.

married and thus had violated the relevant decretal. The second is a declaratory letter in a case of sponsorship at confirmation. During the final years of Johann von Venningen's term of office (1471–78), eight dispensations from godparenthood and five dispensations of kinship came to Rome.¹¹⁵

Freising

The Freising bishops Johann Tulbeck (1453–73) and Sixtus von Tannberg (1474–95) (already mentioned in the story of cathedral master Markus Hörnle), both of whom were trained canonists, ruled their small, poor diocese (233 parishes with 564 churches) in constant, often fruitless struggles against the powerful Wittelsbachs. Bishop Sixtus showed himself to be eager for reform in three diocesan synods (1475, 1480, and 1484); he had breviaries, ritual books, and missals printed for his priests charged with the care of souls. In the penitentiary register, 122 supplications from Freising can be found, of which 107 have to do with an impediment of kinship. According to the “three-to-five-percent formula” the total number of all marriage cases dealt with in Freising before the official would have amounted to 2,000 to 3,000 in the years 1455 to 1492.

For the final decades of the fifteenth century, the remnants of the officialate register from Freising have been preserved in the Bavarian State Archives and the archive of the archbishopric of Munich and Freising. Numerous marriage processes are also mentioned in them. They were carried out in Freising before the marriage judge of the cathedral chapter. Of the greatest interest are the frequent payments of child support which were imposed by the official on the fathers of illegitimately born children. The penitentiary was not responsible for such cases, and they thus do not appear in the Roman register. According to a March 29, 1480 judgment of Johannes Heller, the Freising marriage judge, Konrad Metzler from Feldmoching had to pay Elisabeth Schmidin, who had an illegitimate child by him, three Rhenish florins for the costs of delivery and raising the child.¹¹⁶

115. RPG 5.1880 (year 1471) and 2174 (year 1470). For the pontificate of Sixtus IV, RPG 6, Index s.v. Basel.

116. Bay HStA HL Freising 100 fol. 55 v: “expensa puerperii et educatione pueri.”

Jakob Rosenbusch from Munich paid the Freising official four florins via his proctor, Master Georg Herrburger, as compensation for the deflowering of Anna, daughter of the tailor in Harting. He had allegedly agreed upon this sum with Anna.¹¹⁷ The exact amount of the *Kranzgeld*, however, apparently was up for debate, because a few months later another payment of three florins was registered to Anna, which was to be paid on All Saints' Day and for which a certain Jakob Rudolphi served as guarantor.¹¹⁸ Soon afterwards Rosenbusch married someone else. On October 15, 1480 he received dispensation from the penitentiary in Rome for an intended marriage in Munich to Margarete, daughter of Thomas Rodolf, with whom he was related by blood in the fourth degree.¹¹⁹

The following suits for the assigning of a spouse also do not appear in the Vatican sources. On March 29, 1480, the Freising marriage judge, Johannes Heller, dealt with the suit of Anna, daughter of a Johannes Wolf von Merczling against Andreas Weber von Wissenhausen.¹²⁰ The plaintiff argued that, on Shrove Tuesday two years earlier, Andreas had pressed her into contracting a marriage. She refused him with the argument that she did not want to marry without her father's approval. As a result, Andreas promised Anna *per verba de praesenti* never to marry another, and she made the same promise to him. She claimed in addition that they were together for three nights "but did not do it." Later, on the Feast of St. Margaret, which was celebrated in this region on July 12, Andreas came to Anna again "and did it with her." Afterwards, they slept repeatedly with one another and "did it" regularly, as it says in the Freising records. He had made further assurances that he did not want to take another wife. She had been "robbed of the flower of her virginity" by him, Anna claimed. She confessed to "having done the act with him" again around the Feast of the Presentation of the Lord (on February 2), but before that she purportedly had not had intercourse with Johannes for about a year.

For his part, the accused went on the record stating that "it was

117. Bay HStA HL Freising 102 fol. 245 r.

118. Bay HStA HL Freising 102 fol. 251v.

119. RPG 6.1503.

120. Bay HStA HL Freising 100 fols. 55v–56r.

not true that he had promised Anna not to take another as his wife; he had also never pledged to marry her." He confessed "having done it with Anna," but, as to whether he had deflowered her, he "would leave that to her conscience." With this suggestive formulation, he placed her purity in question. It was also incorrect, he claimed, that they had had intercourse around the Feast of the Presentation of the Lord of this year. It was perhaps correct that he had been in her house at that time and "had lain with her mother." He had not slept with Anna for the entire preceding year. Why was there this controversy over the days and months of their last tryst? Anna was evidently pregnant, and the court endeavored to determine the child's father. Unfortunately the Freising records break off at this point, so that judgment remains hidden from us, and it is not certain whether Andreas at least had to pay a *Kranzgeld*.

Johannes Heller handled a similar marital case on March 29, 1480, the suit of Anna Selgins de Lehen from the parish of Gräfelfing near Munich against Georg Grassner, son of Grassner alias Schalch, also from Gräfelfing. The final judgment is not reported, but Anna gave a detailed report on the course of her long-standing relationship with Georg. On Shrove Tuesday of this year, it would be three years since the defendant had asked her to sleep with him, which she had been willing to do only if Georg would promise to marry her. The defendant afterwards swore *de praesenti* to take her as his wife. After these words, Anna permitted the *copula carnalis*, and the two later had intercourse frequently. He had also, Georg testified, "done it with her" two years ago in the middle of Lent. Then he left the town of Gräfelfing and returned only towards Pentecost, at which time they went to bed with one another again. Anna became pregnant and gave birth to a little boy who was baptized with the name Johannes two weeks before Christmas of the same year. Anna avowed that Georg had been the first man in her life and had deflowered her. She raised the child without Georg having paid anything for his birth and rearing.

The defendant confirmed before the court that he was with Anna and her mother in that Lenten period, "but he did not do the thing with her." In Lent of the same year, he had lain with the plaintiff

three times in her bed and “attempted to know her,” as the record states in biblical language. The plaintiff had not wanted, however, to give in to his wishes. It was true that the plaintiff gave birth to a son two weeks before Christmas. He had also “done it with her” around the feast of the apostle James of that year, thus on July 25. He had never, however, promised to marry her and had paid nothing for the boy “because it was not his child.” He had also not deflowered Anna.¹²¹ Considering the facts of the case, Anna would hardly have received a judgment that was positive for her, but Georg was probably sentenced to payment of a dowry.

We do know the outcome of the process which Katherina, daughter of Johannes Rainweger von Haidelfingen, brought against Thomas Sedelmair, also from Haidelfingen, for the recognition of the paternity of her son.¹²² The plaintiff stated for the record that the defendant had asked to have sexual intercourse with her on Shrove Tuesday, which she allowed, and another time on the sixth day of the week before Palm Sunday. She became pregnant and gave birth to a son one week before the Feast of St. Martin on November 11. The son was baptized with the name Konrad. The defendant had not paid a penny for the birth and nourishment of the boy, and she had not had sexual intercourse with any other man. From the viewpoint of the defendant, the calendar of their intimate relations looked very differently. He had had sex with Katherina on the Sunday *Invocavit*, so six weeks before Easter that year, and another time one week later. It was correct that the plaintiff had had a son a week before St. Martin’s Feast, and that he had paid her nothing, for she had demanded nothing and, in addition, the child could not have come from him. To the question of whether the plaintiff had also had other men, Thomas answered that he was not sure. The record also includes the judgment for this process.¹²³ “We declare,” the sentence reads, “that Katherina became pregnant by Thomas Sedelmair and that the son, Konrad, born by her is Thomas’s natural child. For this reason, we assign the child as his, and he is compelled to be respon-

121. Bay HStA HL Freising 100 fol. 227.

122. Bay HStA HL Freising 100 fol. 227.

123. *Ibid.*, fol. 233r.

sible for his rearing. We are holding off on the determination of the costs in the expectation of a settlement to be reached within two weeks.”¹²⁴ The judgment was confirmed by two witnesses and reported to the defendant by the court.

On the basis of the Heckenstaller collection, a preliminary assessment of the marriage processes in Freising from the years 1471 and 1492 results in the following general impression: successful assignments of marriage by all means did exist, even if the majority of suits to have a marriage confirmed (almost all brought by women) were dismissed because of the lack of proof (*propter non probationem*) or because of the lack of a will to marry (*propter defectum mutui consensus*). The women who had sued for the existence of a marriage were prohibited from claiming this in the future; silence (*perpetuum silentium*) was imposed on them. For the most part, the judge permitted marriage with another woman, but “the fate of the seduced woman was left to his conscience,” as the judgments regularly state (*ipsam N.N. sue conscientie relinquentes*). The Freising judgments always mention the day and time when they were read out as well as the witnesses present. If a marital impediment had been determined, the judges separated the affected couple, usually without giving information on a right of appeal. Since processes for the assignment of a marriage and paternity suits could legally be decided in Freising, the path to Rome was not necessary in such cases. Sigismund Ras from Crantzperg, who had been assigned in a lawsuit as the husband of Katharina in 1492, appealed the judgment of the judge of the cathedral chapter, Jacobus Ruedolff, to Rome.¹²⁵ His supplication unfortunately cannot be found in the archive of the penitentiary, where 122 supplications from Freising are registered. In the 122 supplications, an impediment of kinship is mentioned 107 times. At the time of their request, 89 couples had already contracted a marriage, and about a third of them already had children. On 70 occasions, the pope was asked to allow them to remain in their marriage, and the imposition of a composition is mentioned in 14 supplications.

124. Ibid.: “taxationes premissorum nobis inposterum reservamus ipsam sub spe concordie ad quindenam suspendendum.”

125. AEMF, Heckenstallersammlung, vol. 226 fol. 25.

Regensburg

The medium-sized diocese of Regensburg, with its 465 parish churches and up to 1000 secondary churches, fell completely outside of the mainstream, in that only 45 supplications reached Rome from this city on the Danube. Ruprecht bei Rhein ruled as bishop from 1457 to 1465 and then Heinrich von Absberg from 1466 until 1492. A Wittelsbach, Ruprecht was not yet twenty years old when his election as administrator of the diocese was pushed through by Duke Ludwig. Shortly after he took over the office, Heinrich enacted strict reform decrees against those holding concubines and, in the year 1475, promulgated synodal statutes and had liturgical books printed. Bishop Heinrich's lack of a will to reform thus can hardly be advanced as the cause for the low number of supplications in the penitentiary from Regensburg.

Thanks to the excellent study of Christina Deutsch and several older studies by Rudolph Weigand, it is known that the situation of the ecclesiastical jurisdiction in the bishopric of Regensburg was marked by a special circumstance. The acts of the marriage court that have been handed down in the diocese allow one to postulate that marital impediments based on kinship were not pursued *ex officio* in the bishopric. That may be explained by the fact that, between 1373 and 1526, the diocesan jurisdiction was not exercised by the bishop, his vicar general, or an episcopal official but rather by the "cathedral chapter judge," who would not have wanted to create any conflict with the ordinary, especially since the legal competences between the cathedral chapter and the bishop were heavily debated.¹²⁶ If it is true that 300–400 marriage processes took place per year in Regensburg,¹²⁷ which for our period of investigation would result in an improbably high total of 11,000–16,000 processes, then the forty-five supplications registered in Rome during this time amount to just 0.24–0.35 percent of all Regensburg marriage processes. On the ba-

126. Deutsch, "Illegale Eheschließung und gültige Ehen," AKKR 173 (2004), 353–83.

127. Weigand, "Die Rechtsprechung des Regensburger Gerichts in Ehesachen unter besonderer Berücksichtigung der bedingten Eheschließung nach Gerichtsbüchern aus dem Ende des 15. Jhdts.," AKKR 137 (1968), 410.

sis of the court acts of the diocesan courts of Regensburg, however, an average of 295 cases per year between 1480 and 1490 has been calculated. Two-thirds of these processes were brought to a close as summary processes in one day; sometimes the cathedral chapter judge settled up to thirteen cases in a single day. Only 10–15 percent lasted longer than a month.¹²⁸

How do these determinations fit with the data from the penitentiary? In the Roman register, an impediment based on kinship is present in thirty-nine of the forty-five supplications (three confirmations, twelve baptisms, four relations by marriage, and twenty relations by blood). Thirty of the couples making supplications to Rome were already married and just as many had a composition imposed on them by the penitentiary, which is a full sixty-six percent of all cases. Evidently, processes went on to Rome from Regensburg above all when the couple wanted to remain together against the judgment of the cathedral chapter judge, and that was the case twenty times. On January 21, 1490 a judgment was given in the process between Katharina, daughter of Erhard Fuchs from Pargstetten, and Conrad Weinzurl from Reyberstorff, between whom a consanguinity in the third degree was determined at court and whose marriage had already produced children. After the judgment, which declared their marriage null and void (*annullamus*), the couple apparently had no intention to remain together against the sentence of divorce.¹²⁹ A corresponding supplication is in any case not to be found in the penitentiary register.

From the local sources in Regensburg and Salzburg, Christina Deutsch uncovered and assessed 2,036 processes related to marriage between 1480 and 1538 with 1,759 judgments given.¹³⁰ In these cases, women appeared as plaintiffs much more than men. More than ninety percent of the persons appearing before the court belonged to the free-holding population from the entire bishopric; there were

128. Deutsch, "Illegale Eheschließung," 373 n.64. Deutsch, *Ehegerichtsbarkeit*, 113–14, 118–19, and 257.

129. Edition of the acts is in Deutsch, *Ehegerichtsbarkeit*, 25ff. and in Weigand, "Die Rechtsprechung," 436–37.

130. Deutsch, *Ehegerichtsbarkeit*, 263–381.

"maids, serfs, simple craftsmen, and wage-laborers." Suits to have a spouse assigned, including demands for compensation for deflowering and confinement, amounted to sixty percent of all cases. In two-thirds of these processes, the man was sentenced to pay. An exchange of consent, with or without *copula carnalis*, without other witnesses preceded the court process in 665 instances. Because of the well-known problem of proof, successful affirmations of marriage remained rare, but the seduced women received a compensation payment in eighty-seven percent of the processes of this kind. On the issue of virginity, the Regensburg court contented itself with an oath by the women. Moreover, ninety-seven women and sixty-three men brought charges before the court because of adultery; more than half were successful and received a separation. Eighty-six women declared that they had suffered *saevitia* (brutality) from their husbands. In the forty-three total cases of impotence, the marriage was dissolved only twice. Finally, the Regensburg judge handled fifty cases having to do with an impediment of kinship, among which forty-seven couples were separated. All of these couples could have pleaded for dispensation in Rome.

The low number of supplications that reached Rome and some of the decisions of the Regensburg judges cause one to speculate that they proceeded liberally in the application of decretal law and that they decided numerous cases on their own that in Constance or Chur, for instance, would have been referred to Rome. Thus Barbara, whose husband, a burgher of Regensburg, had run off five years earlier, was permitted, against canonical regulations, to remain in a second marriage with a Teutonic knight, even though there was no certain news of the death of the first husband.¹³¹ The judges apparently showed a tendency to make decisions sensitive to "the life circumstances of the parties" or directed to "the express wishes of those bringing the process," as Christina Deutsch concluded, and strove for settlements outside of court (*concordia*). None of the formularies for a judgment of separation because of an impediment of kinship refer to the possibility of a papal dispensation. As to costs, compensations for

131. *Ibid.*, 368.

deflowering in Regensburg were only half as expensive as they were, for instance, in Basel, but here as also elsewhere, they were adjusted to the social situation of the plaintiff and the seducer; compensation for the birth of a child, though, was set at ten florins.¹³² The marriage processes carried out in Regensburg, one can state in sum, departed in several respects from the processes common in other dioceses. The cathedral chapter judge did not tend "to a strict application and execution of ecclesiastical marriage law."¹³³

Passau

Under Bishop Ulrich von Nussdorf (1454–79), the bishopric of Passau experienced shrinking borders, for, following the path set out by Pius II, Pope Paul II raised the city of Vienna to its own diocese in 1469. Passau nevertheless remained one of the largest German dioceses. From first to last, the Passau office-holders, who followed one after the other in rapid succession, Georg Hessler (1480–82), Friedrich Mauerkircher (1482–85), Friedrich von Öttingen (1486–90), and Christoph Schachner (1490–1500), can hardly be described as eager for reform (the last diocesan synod took place in 1470). Two officialate courts, one above and one below the Enns River, the latter with a seat in the city of Vienna, possessed the general episcopal jurisdiction, while the right to decide marriage cases belonged to the cathedral deacon. Between 1455 and 1492, only 97 supplications came from the bishopric of Passau with its 920 parish churches to Rome, 85 of which had to do with an impediment of kinship. According to the "three-to-five-percent formula," 2,000–3,300 marriage cases would have been handled before the cathedral deacon in Passau from 1455 to 1492. The cathedral deacon carried out the processes in the same way as officials in other dioceses, by having the accuser and accused summoned to his seat peremptorily by the respective parish priest within a timeframe of six days. In two of the writs of citations transmitted from the years 1445 and 1446, women had brought the suit "because of a marriage pledge," which the ca-

132. *Ibid.*, 229–35, quotation on 236–37.

133. *Ibid.*, 379.

thedral deacon of the time, Burkard Krebs von Herrenberg, had to decide.¹³⁴

More telling sources are handed down from the incorporated parishes of the chapter of St. Florian. These sources show that the canons observed the three-fold banns of marriage, encouraged those wanting to marry to go to confession beforehand, issued the couple a written document about the marriage contracted *in facie ecclesie*, and delivered difficult cases, for instance those of consanguinity, over to the cathedral deacon in Passau for clarification. In 1464, Master Johannes Sprenger, the parish priest of Niederneukirchen an der Ipfl, reported to his colleague Johannes Salzmann von St. Florian that, during a banns of marriage for Georg Kochl and Katrey in Lucham, the maidservant of Mr. Müller von Holcznperg by the name of Dorothea “called out in a loud voice and in a way to be understood clearly that the priest could not wed the two because Georg had previously given her a pledge of marriage.”¹³⁵ The parish priest afterwards questioned Georg and came to the conclusion that the matter had to be examined and decided by a higher authority.

The provost of the chapter also had to deal with a farmer from St. Florian who had run away from his wife, settled down in the parish of Schrembs in Lower Austria, and there married again after four years. In May 1464 the following case came for decision before the canonically trained choir master, Wolfgang Kerspeck, licentiate in canon law: Barbara, daughter of Peter Neusidlbauer auf den Wurzburg, appeared before him and brought suit against Florian, son of Spät in Anger, who had pledged marriage to her and afterwards deflowered her. Kerspeck acquitted Florian in a *sententia definitiva*, all because Barbara could not bring forward sufficient proof for the pledge of marriage to her. Because of the sexual intercourse and her claim that Florian deflowered her, however, the judge decided that Florian had to pay reparations. He was to pay her a compensation or

134. Othmar Hageneder, “Zur Ehegerichtsbarkeit des Domdekans von Passau im 15. Jhdt.,” in *Festschrift Franz Loidö zum 65. Geburtstag*, ed. Elisabeth Kovács (Vienna, 1971), 48, documents on pp. 46–47, *de et super fede matrimonii*.

135. Albin Czerny, *Aus dem geistlichen Geschäftsleben in Oberösterreich im 15. Jahrhundert* (Linz, 1882), 29–30.

give her a dowry, the amount of which was to be determined by the judgment of experienced men, or he could marry her. The judge put down this sentence in writing. The canons of St. Florian took the legitimate claims of the seduced young woman into proper account in the same way as officials in other bishoprics.¹³⁶ Barbara appears to have come to terms with this decision; in any case, she did not bring her suit before the pope. And why should she have? The canons had obtained justice for her.

In the ninety-seven supplications to the pope from Passau, eighty-five of them have to do with an impediment of kinship. More than half (fifty-six) of the petitioners had already married at the time they submitted their request, and twenty-seven could already boast children. Fifty-five couples supposedly knew nothing of the impediment; forty-five of them mentioned in their supplications the express desire to continue in their marriage. A fifth of the petitioners (nineteen) were sentenced to a composition payment.

Würzburg

According to the register of 1464–65, under bishops Johann von Grumbach (1455–66) and Johann Scherenberg (1466–95), the medium-sized bishopric of Würzburg was divided into 10 archdeaconries, 18 rural chapters, 844 parishes, and 600 vicarages, 231 of them prebends for matins priests. In a manner analogous to the procedures of other southern German bishoprics, numerous marriage processes could be brought before the official and the judges appointed by him in the city of St. Kilian. Unfortunately, however, the Würzburg archives are empty in this regard, so that we cannot compare any of the 193 processes registered in Rome with local sources. In 172 of the 193 supplications, the case has to do with an impediment of close kinship or a *cognatio spiritualis*. According to the “three-to-five-percent formula,” the total number of all marriage cases handled before the official in Würzburg can be estimated at 3,800–6,400 between 1455 and 1492.

As a replacement for the non-existent official’s register, a formu-

136. Ibid., 30–32.

la book of the Würzburg bishop's chancery stemming from a much earlier period, the beginning of the fourteenth century, allows one to make certain inferences about the processes handled in Würzburg. There are exactly four formularies in which a marriage problem is dealt with.¹³⁷ To judge from the first relevant case, against the rules of canon law, married men in Würzburg occasionally entered into the spiritual state even without their wives' permission. According to this formulary, the bishop of Würzburg instructed an abbot or prior to send a monk back to his wife. The man had carried out his intention "to be able to don the monk's habit" only by putting his young wife under massive pressure. The formulary quoted the passage mentioned above several times about the fear that overwhelms all. The abandoned wife had called upon the ecclesiastical court and claimed "horrific threats" with which her husband had made her compliant. She had no intention on her side of taking the veil or vowing perpetual chastity. Rather, she had insisted on getting her husband back "in order not to be seduced by the devil and fall into the vice of *fornicatio*." The head of the monastery was thus commanded to remove the man from the monastery with the help of public force and to bring him back to his wife by implementing all ecclesiastical measures of compulsion.

Three other formularies concern activities of the appeals court in Mainz. In the first, the judge in Mainz charged his Würzburg colleagues to investigate "a unilaterally claimed marriage contract," and, if they should uncover an impediment, to declare the bond null. Apparently a woman in Würzburg had sued to have a man assigned as her spouse, and the process had made its way to Mainz. More interesting is the second of the Würzburg cases handled by the archiepiscopal court. Two canons of Mainz, the schoolmaster and the cantor, acted by order of the pope as judges delegate. A nobleman related to his wife by blood in the fourth degree had gotten married without receiving dispensation. The permission was later received

137. Alfred Wendehorst, ed., *Tabula formarum curie episcopi: Das Formularbuch der Würzburger Bischofskanzlei von ca. 1324* (Quellen und Forschungen zur Geschichte des Bistums und Hochstifts Würzburg 13; Würzburg, 1957), Nr. 62, 204, 238, and 319.

from the pope (but no mention is made here of the penitentiary). As usual, Rome had delivered the approval for the continuation of the marriage and the legitimization of their children to the archbishop of Mainz to be made known and carried out. The third relevant formulary dealt with the consequences of a judgment made by the archiepiscopal official. The judge had come to a valid judgment after a proper process in which a woman had been awarded to her husband and “sentenced” to live the married life with him. The woman, named Adelheid, eluded this judgment by fleeing into the Würzburg diocese. She was thus excommunicated, and the official of the Würzburg curia was commanded to make this fact known in the bishopric.

Augsburg

Even though by surface area the Augsburg diocese was only about half as big as that of Passau, in the middle of the fifteenth century there were 1,054 parishes in the bishopric of Augsburg. From 1424 to 1469 the early humanist Peter von Schaumberg ruled the diocese; from 1439 he also possessed the title of cardinal. He had studied in Bologna and had been Pope Martin V's chamberlain. He held the last of three diocesan synods in 1452. Inclined to reforms and order, on February 8, 1451, Pope Nicolaus V gave him, among other things, the power to issue forty marriage dispensations in the diocese of Augsburg and twenty each in the surrounding dioceses.¹³⁸ That would be the reason that Cardinal Nicolas of Cusa did not visit these regions during his legation. In 1467, Paul II named Peter a *legatus a latere* in crusade affairs. He helped his successor, Johann von Werdenberg, into the episcopal office (1469–86) by naming him coadjutor. Like Friedrich von Hohenzollern, bishop of Augsburg from 1486 to 1505, Johann had not studied in Italy. He did hold a synod immediately in the year 1486 in his palace in Dillingen and concerned himself with the printing of breviaries and missals.

One of the oldest officialate court registers north of the Alps comes from the bishopric of Augsburg; it contains among other things marriage processes from the years 1348 to 1352.¹³⁹ Among

138. RG 6.4922.

139. Edition: Christian Schwab, *Das Augsburger Offizialatsregister (1348–1352)*

the 228 processes registered in the year 1450, 100 were brought for the recognition of a marriage; of these 100 processes, 76 had been initiated by women. Only twenty percent had success, since, for the most part, the marriage pledge could not be proven before the court. Only about ten percent of the Augsburg processes were brought with the goal of an annulment, and at least ten cases had to do with impotence. While adultery led to a separation from table and bed fourteen times, there were almost as many processes that had to do with permitting a married couple to remain chaste in the future and lead a religious life. Brutality (*saevitia*) on the part of the husband seemed not to play a role in the Augsburg processes. That processes on account of *affinitas*, *consanguinitas*, and spiritual kinship “played a relatively minor role” at the officialate court of Augsburg at the time is not surprising, for they belonged to the papal curia, not before the official.¹⁴⁰

In the years 1455 to 1492, a total of 447 processes came to Rome from Augsburg and were decided by the penitentiary. If one projects the number of all Augsburg marriage processes on the basis of the “three-to-five-percent formula,” then for these thirty-eight years, one comes to between 8,900 and 14,900 processes, in any individual year somewhere between 110 and 390 processes. This number would correspond to the 228 processes that occurred in the city of the Fuggers in 1350. Only ten percent (48) of the petitioners registered in the penitentiary were still unmarried at the time of the supplication in comparison with the 359 couples already living together in marriage. One hundred seven supplicants confessed to a clandestine marriage. In 421 cases, an impediment of kinship existed between the man and woman, caused 30 times through a sponsorship at confirmation, 64 times through godparenthood, 94 times through marriage, and 233 times by blood. The number of couples in Augsburg who also had to pay the papal datary a composition was rather high (75). We know that 318 petitioners wanted to have the pope

(Forschungen zur kirchlichen Rechtsgeschichte und zum Kirchenrecht 25; Cologne, 2001). On the following, see Bernhard Schimmelpfennig, “Religiöses Leben im späten Mittelalter,” in *Geschichte der Stadt Augsburg* (Stuttgart, 1984), 221–22.

140. Schimmelpfennig, “Religiöses Leben,” 222.

legitimize their children, and 266 explicitly stated their desire to remain together in the future as a married couple.

Following the trend of the time, the municipal courts in the second half of the fifteenth century did not punish any form of "wild marriage" any differently than the ecclesiastical courts did, and they handed out punishments with no respect of person. No less than the prosperous merchant Hans Welser, the brother of Augsburg's mayor, was exiled from the city in 1457 because he had seduced his niece, Ursula Mörlerin, and "slept with her and thought it to be marriage, which could not be." The city council even intervened with the pope, pleading with him not to grant the marriage under any circumstances. In fact, according to curial practice, the simple fact of the seduction of a minor put granting the pardon out of the question for Pius II, despite the intervention of the Bavarian Duchess Margarete, the godmother of Ursula and Hans's child. Hans Welser could enter Augsburg again, at least as a visitor, only in 1463.¹⁴¹

Cologne

In the second half of the fifteenth century, the archbishopric of Cologne lived through a difficult time. At the death of Dietrich von Moers (d.1463), it was financially ruined, and Soest, the most important city of Kurköln, was lost. The provincial diet and the cathedral chapter proved to be fierce opponents under archbishops Ruprecht bei Rhein (1464–80) and Hermann von Hessen (1480–1508). The vicar general had to be chosen from the chapter. The university, founded in 1388, placed qualified workers at the disposal of the ecclesiastical administration; the printing press flourished there beginning in 1465. In February 1474, Ruprecht was temporarily struck by the pope with excommunication because of an unpaid debt; he resigned in 1478 and died in a Hessen prison in Marburg in 1480. His successor faced problems with Burgundy but ultimately proved successful in the dispute. In Cologne, the greatest city of the empire, all levels of the population cultivated close contact with the papal curia.

Between 1455 and 1492, the penitentiary register shows 435 sup-

141. *Chronik des Hector Müllich*, vol. 3 of *Die Chroniken der schwäbischen Städte, Augsburg* (Göttingen, 1892; repr. 1965), 122 n. 8. RG 8.3792.

plications from Cologne. Of them, 393 were sent to Rome because of an impediment of kinship—only two of them because of sponsorship at confirmation, but 62 because of godparenthood. When they sent their supplications to Rome, 279 couples already lived together in marriage, and 89 already had children; 298 petitioners asked for the legitimization of their children, born or unborn. Although Cologne brought almost as many supplications (435) to Rome as Augsburg (447), only 29 couples from the Lower Rhine were sentenced to a composition fine in comparison with 75 in the city of the Fuggers.

If one applies the “three-to-five-percent formula” for Cologne as well, then between 8,700 and 14,500 marriage processes must have taken place there during the period of investigation. But, as has also been complained about regarding other dioceses, only a few acts of legal processes from the fifteenth century have survived in the archives of the archbishopric of Cologne with its 1,400 parishes. Exceptions are the archdeaconries of Werl and Xanten as well as the city of Soest.¹⁴² The marriage jurisdiction in the archiepiscopal district was set up in two levels. The officials of the archdeacon were the ones responsible for the marriage processes at the primary level; the first instance of appeal was the archbishop’s official. All the same, in the metropolis on the Rhine, marriage processes also took place before other spiritual judges, such as the official of the cathedral provost or judges delegate from the pope. It is no wonder that also in Cologne “marital matters” made up “the lion’s portion” (Janssen) of all processes before the ecclesiastical court. In cases of impediments of kinship, the officials pronounced a divorce, as usual. In order to inhibit clandestine marriages, the late medieval diocesan statutes impressed upon the parish priests and faithful of the bishopric the necessity of the ecclesiastical banns of marriage, but marriage ceremonies, even in the moderate-sized diocese, were in no way unified.¹⁴³ The three-fold banns had already been prescribed and clandestine marriages forbidden under penalty of excommuni-

142. Löhr, *Die Verwaltung des Kölnerischen Großarchidiakonats Xanten*; Bettgenhaeuser, *Drei Jahresrechnungen*, 151–201.

143. On marriage and weddings in Cologne with examples, see now Janssen, *Das Erzbistum Köln*, 2.2.166–78.

cation since the end of the thirteenth century. This punishment was, however, very rarely implemented.

Exact numbers on processes before the archdeacon's official do exist for the region of the archdeaconry of Xanten, encompassing 148 parishes.¹⁴⁴ Apart from the court holidays, the official held court sessions, almost exclusively on marriage matters, four times weekly in the tower of the city's cathedral on the Lower Rhine. All marriage processes were carried out as summary procedures. As in Constance and elsewhere, the summons went out by means of the parish priest of the accused. The archdeacon rarely made use of his right to excommunicate defendants or pronounce an interdict on their place of residence. Apparently without much success, the ecclesiastical judge tried to use the local priest to dissuade the women and men poised for a lawsuit from their intent: "Go home and be good children; save your money," one Xanten record says.¹⁴⁵ The evaluation of the "simple cases" of Xanten marriage processes for the years 1460 to 1499, predominantly suits for the assignment of a marriage, give the usual picture. Men appear three times more often as defendants than women. A positive judgment, however, that is, the determination that a marriage did exist, occurred in only 37 cases out of 429 processes, thus in not even a tenth of the suits for such assignments. Seduced young women were also not more successful on the Lower Rhine than in other dioceses, but, as usual, the ecclesiastical court assured for them a compensation for deflowering and confinement.

Despite the preponderance of summary procedure in simple processes, marriage processes could also be drawn to Cologne. Druytgin, daughter of Peter von Baer (Bair), had sued her husband, Heinrich Merkelbach because of adultery and for a payment of 600 florins, which were due her according to their marriage contract. The process ran from May 1447 until August 1451. Then she seems to have left Heinrich, for he turned to the archbishop in November 1455 because of an "unjustified desertion."¹⁴⁶ The city pulled the mar-

144. Löhr, *Xanten*, 209–222.

145. Löhr, *Xanten*, 217.

146. Herrmann Keussen, "Kölner Prozessakten 1364–1520," *Mitteilungen aus dem Stadtarchiv Köln* 24/25 (1894), 45–64, Nr. 86 and 156. I thank Dr. Deeters for this information.

ried cleric Johannes Bonenberg before the curia's official in October 1470. It wanted to deprive him of his clerical privileges, presumably also the exemption from municipal taxes, for he had been married several times and his deceased wife Bela Preuten had led an immoral life, carrying on affairs with various prelates. The city council of the greatest city in the empire could not let that go unpunished. In February 1470, Johannes and Bela (Velia), who at the time was still alive, had received from the Roman penitentiary the privilege to be able to hear Masses during the interdict. Because of the struggles between Archbishop Ruprecht, the cathedral chapter, and the Diet, Cologne was under interdict at the time. The case of Bonenberg repeatedly busied the city council of Cologne in these years.¹⁴⁷ Johannes also appears to have called on the pope to defend his clerical status, even though no Roman documents about it are preserved, for in July 1472 the deacon of the monastery of Salvator in Utrecht made an appearance as judge delegate in the trial against the city of Cologne.¹⁴⁸ The process of Bonenberg versus the city dragged on and led to thick volumes of contemporary recorded acts in the city archive. Additional processes at the officialate court in Cologne handled the usual suits for the fulfillment of marriage pledges and claims of defloration.¹⁴⁹

The register of the papal chancery, not the supplication register of the penitentiary, offers an impressive example of the complexity and length of a marriage process in the Cologne region. A letter from Pope Paul II to the bishop of Münster from the year 1470 gives a detailed report of a process which Nesa de Els from Cologne had brought to Rome.¹⁵⁰ In the letter, the pope demanded that the bishop of Münster decide her case as a judge delegate *appellatione remota*. What had happened? A certain Leonard from Aachen had at one point brought suit against Nesa before the archbishop of Cologne with the claim—false,

147. RPG 5.1747. For the city council: *Beschlüsse des Rates der Stadt Köln 1320–1550*, vol. 1: *Die Ratshmemoriale*, ed. Manfred Huiskes (Publikationen der Gesellschaft für rheinische Geschichtskunde 65; Düsseldorf, 1990), year 1470: Nr. 216, 235; year 1471: Nr. 122; 1472: Nr. 12, 70.

148. Historisches Archiv der Stadt Köln, 120 (Civil Suits), Nr. 205 and 214.

149. Historisches Archiv der Stadt Köln, 120 (Civil Suits), Nr. 86. Defloration processes: Nr. 452, 466, 470, 479, and 481.

150. RG 9.4642; ASV Reg. Lat. 696 fols. 40v–41v (March 3, 1470).

in her view—that she had contracted a marriage with him *per verba de praesenti* and refused to take up married life. The official decided in Leonard's favor and ordered Nesa under threat of the common ecclesiastical penalties to move in with him. Nesa felt unfairly untreated, not least because her objections and evidence had not been appreciated by the court, and she appealed to Rome. On the basis of the usual commission to the Dominican Heinrich von Rübenach, who was the suffragan bishop of Cologne, Inghelbert, then deacon of the Church of St. George in Cologne, was charged with the investigation. Inghelbert absolved Nesa *ad cautelam* from excommunication. Leonard appealed to the pope with the incorrect claim that Nesa was his legitimate wife. He said not a word about the judgment of the deacon of St. George and received the routine papal *littera* with which the archbishop was commanded to investigate the case. For his part, the archbishop charged the deacon of St. Kunibert with the task. Although Nesa would not have had to appear before the judge and despite her objections (*exceptionibus*), the deacon of St. Kunibert decided in Leonard's favor. Nesa thus made another appeal to the archbishop. He ordered the deacon of St. George to become active again and forbade the deacon of St. Kunibert from proceeding further in the matter. The latter did not pay attention to this command; he commissioned the rector of the parish priest of Young St. Martin, Ludolph de Judeis, among whose parish members Nesa numbered, to excommunicate the woman publicly. In opposition to this, Nesa turned once more to the apostolic see with the request to appoint new judges delegate. With the bull of Paul II to the bishop of Münster, which narrated the entire affair, the pope acceded to her wish. According to the penitentiary register, neither Nesa nor her legal opponent ever turned to the papal pardon office; instead, their appeals were always presented to the pope via the chancery. The costs that arose there were not low, and we may conclude from that that Nesa and Leonard did not belong to a low social group.

Eichstätt

With only 310 parishes, the bishopric of Eichstätt belonged among the small dioceses in the empire. In the second half of the fifteenth century, it fell under the rule of the humanist bishops Johann von

Eych (1445–64) and Wilhelm von Reichenau (1464–96). They had studied in Italy (Padua) and energetically labored for reforms. They regularly arranged synods and visitations and initiated book printing in the city (in 1484). Bishop Wilhelm stood as chancellor of the University of Ingolstadt, founded in 1472. Around the middle of the fifteenth century, the jurisdiction in marriage matters in the bishopric passed from the competence of the official to that of the vicar general. According to synodal statutes of 1447, cases of adultery, broken marriage pledges, all kinds of marital impediments, and questions of the validity of a marriage bond were to be reported, in particular by ecclesiastics at the parish level, to the official.¹⁵¹ According to the earlier synodal statutes of 1434, adulterers were to be registered with the vicar general and not with the official. A number of records for the vicar general are extant for the months between April 1475 and March 1476. The precise evaluation of them for marriage processes still remains to be done.

In any case, 106 supplications in marriage matters were entered into the penitentiary register from Eichstätt between 1455 and 1492. Calculated according to the “three-to-five-percent formula,” that comes out to a total of between 2,100 and 3,700 marriage processes. An impediment of kinship occasioned the request for pardon in 95 supplications. Fifteen couples had to pay a composition. Eighty-four supplicants had already taken up the married life, five of them clandestinely, before they submitted their request for pardon in Rome. Fifteen couples stated that they had already had children. Only nine couples had not yet consummated the marriage, and only seven claimed not to have any children.

Worms

With 246 parishes, the bishopric of Worms was among the smallest dioceses of the late medieval empire. It extended on both sides of the Rhine in the Palatinate. The city itself boasted nine parishes. The two bishops of the period of time of interest here, both of whom were born in Oppenheim, Reinhard von Sickingen (1446–82) and Johann von Dalberg (1482–1503), handed the juristic administra-

151. Foundational is Buchholz-Johanek, *Geistliche Richter und geistliches Gericht*, esp. 147ff.

tion over to the vicars general. These men of civic origin studied law and thereby showed themselves capable of the office.

The penitentiary scribe registered 118 supplications from couples from Worms. According to the "three-to-five-percent formula," this number lets one conclude that a total of 2,300–3,900 marriage processes came before the episcopal court. An impediment of kinship served as the reason for the path to the papal well of grace 108 times (three for confirmation, thirteen for baptism, twenty-eight for kinship by marriage, sixty-four for consanguinity). Eighty-nine supplicants supposedly had no knowledge of an impediment. Ninety-five of the supplicating couples had already entered into a marriage when they turned to Rome; ten of those admitted to a clandestine marriage. In eighteen cases the penitentiary made a composition payment a condition for the issuing of the pardon.

Speyer

The bishopric of Speyer also stretched across both sides of the Rhine in a densely populated region. It included the main city of the Palatinate, the university town of Heidelberg. It had about 250 supplications registered in Rome. The vast majority of them (230) fell during the tenure of the reformist bishops Mathias Rammung (1464–78), previously chancellor of the Palatinate, and Ludwig von Helmstatt (1478–1504). Undoubtedly one can trace this relative high number of supplications from Speyer in Rome to the energetic exertion of pressure at the parish level and the ecclesiastical oversight of the moral conduct of the faithful, especially by Bishop Mathias. In his reform decrees of 1464, he forbade clandestine marriage, decreed a three-fold pronouncement of the banns of marriage, and threatened with ecclesiastical punishments all couples that should dare to have sexual intercourse with one another prior to the *sollemnisatio* of their marriage by the parish priest. Of the supplicants, however, about 200 couples had done just that, despite consanguinity (150) and kinship by marriage (83). With a mere eighteen cases, only spiritual kinship hardly played a role in the bishopric of Speyer.¹⁵² Con-

152. The reform decrees are in the *Collectio processuum synodaliū ... diocesis Spirensis ab anno 1397–1720* (1785), 69–132.

spicuously many, namely thirty-five couples, also had a composition payment inflicted on them. On the example of the penitentiary supplications from Speyer, one can then perceive the connection of energetic reform measures and the number of supplications. With his reform decrees, Bishop Rammung had compelled wayward couples to seek dispensation in Rome.

Brandenburg

Brandenburg belonged to the twenty-two dioceses of the German empire from which no or only a very few supplications in marital matters reached Rome. Only three supplications for Brandenburg couples are to be found in the register of the penitentiary. Precisely for that reason, the question must be posed why the people in this small bishopric showed so little interest in papal marriage dispensations. After all, the bishopric did surround Berlin, the slowly developing capital city of the Brandenburg electorate. The paucity of supplications cannot be blamed on a lack of knowledge of canonical rules. At a diocesan synod on May 7, 1380, Bishop Dietrich von der Schulenburg (1365–93) had issued extensive statutes and instructed the clergy to announce them. They were also printed in Leipzig in 1489.¹⁵³ In paragraphs 5, 6, and 7, the bishop directed the priest in charge of the care of souls to make an oral announcement to the faithful that a marital impediment arose from a *cognatio spiritualis*, that is, from “baptism, confirmation, and godparenthood.” Paragraph 7 on marriage enlarged upon the prohibition of secret marriages, the banns of marriage, and various *impedimenta*, and it referred to the fact that, in the so-called closed times of fasting and advent, people were to abstain from the *sollemnitatis nuptiarum*.¹⁵⁴ The lack of supplications in Rome thus cannot be blamed on ignorance.

Two of the three supplications from Brandenburg came from a single noble couple, Johannes Treskow and Margareta von Alvensleben, who asked for dispensation in the same matter on February 18

153. Dietrich Kurze, “Brandenburg,” in *Die Bistümer des Heiligen Römischen Reiches von ihren Anfängen bis zur Säkularisation*, ed. Erwin Gatz (Freiburg, 2003), 102–12.

154. A. F. Riedel, *Codex diplomaticus Brandenburgensis* 1.8 (Berlin, 1847) 324–27.

Table 3. Supplications in the Penitentiary from the German Bishopsrics

Diocese	Basel	Augsburg	Eichstätt	Cologne	Freising	Passau	Regensburg	Würzburg	Worms	Speyer
Total Supplications	61	447	106	435	122	97	45	193	118	251
Marriages										
Marriage not yet contracted	8	48	9	65	14	21	9	41	18	16
No sexual relations	1	48	17	20	5	4	4	39	12	20
Total marriages already contracted	45	359	84	279	89	56	30	124	95	213
Clandestinely	4	107	5	101	23	12	3	11	10	15
Publicly	18	79	26	69	21	14	6	47	30	66
Sexual relations	46	317	73	293	84	58	30	115	86	199
Request to continue in the marriage	30	266	64	224	70	45	20	113	73	165
Separated by the local official	7	43	8	10	10	1	2	18	9	22

Table 3. (Cont.)

Diocese	Basel	Augsburg	Eichstätt	Cologne	Freising	Passau	Regensburg	Würzburg	Worms	Speyer
Impediments										
Not known	43	288	69	268	87	55	24	126	89	205
Known	9	102	26	49	11	8	12	28	14	11
Confirmation	3	30	9	2	3	1	3	11	3	7
Baptism	18	64	12	62	21	7	12	15	13	11
Consanguinity	21	233	47	207	56	48	20	99	64	150
Kinship by Marriage	15	94	27	122	27	29	4	47	28	83
Settlement										
<i>verba de praesenti</i>	16	138	29	75	35	14	8	49	28	68
<i>verba de futuro</i>	1	5	1	16	2	11	3	7	0	2
Children										
Already had	12	86	15	89	32	27	13	35	22	36
Not yet had	4	27	7	27	13	9	7	23	11	16
Request for legitimization	48	318	74	298	89	62	34	148	90	198
Composition	6	75	15	29	14	19	7	30	18	35

and on April 25, 1487 to be able to marry despite a consanguinity in the fourth degree between them.¹⁵⁵ The third supplication came from Johannes Wegener from Brandenburg, who was engaged to a certain Geseke, who passed away before the marriage was consummated. He afterwards intended to marry her sister, Margarete, and asked the pope in 1471 to be able to enter into the marriage despite the impediment of public decorum.¹⁵⁶

There are many reasons for the lack of Brandenburg requests for pardon in Rome. The bishopric lay in a region sheltered from curial attention. The elector filled the episcopal seat with ecclesiastics acceptable to him, all of whom had studied at universities and were Praemonstratensians. At least half of the canonry of the cathedral chapter, also Praemonstratensian, was in the hands of burghers. In the larger cities, as can be seen in the data gathered thus far, the spiritual courts faced more and more competition from municipal courts of instance. Even the bishopric of Lübeck, with the important city of the Hanseatic League as its center, saw a grand total of only six supplications reach Rome during the years 1455 to 1500. Perhaps the Brandenburg official was also not interested in having his married couples make their way to Magdeburg or Rome but, with a relatively liberal interpretation of canon law (as in Regensburg), took care that problem cases were resolved in his own land. But these are admittedly mere speculations.

The details of the supplications for a marriage dispensation which came to Rome from the above-mentioned German bishoprics are summarized in table 3.

155. RPG 7.491 and 581. There is no difference between the two texts.

156. RPG 6.38.



Conclusion

The Roman curia, with the pope, the bearer of the “fullness of spiritual power” (*plenitudo potestatis*), at its head, served as the “well of grace” for all Christians of the late Middle Ages, pure and simple. Not only did the path to lucrative ecclesiastical prebends of every calibre, from the office of a priest in charge of Mass at matins up to the cardinalate, lead through Rome; the papal court also produced “*potere spirituale*” (Arnold Esch) in the form of absolutions, dispensations, and indulgences. The complicated juristic prescriptions for how a “rightful marriage” (Paul Mikat) came about, based on the prescriptions of the Fourth Lateran Council about the banns of marriage as well as the marital impediments of kinship and on the papal decretals, had resulted in a flood of processes *in partibus* in the late medieval empire. Of these marriage processes, only about three to five percent reached Rome and are reflected in the supplication register of the papal penitentiary. Between 1455 and 1492/1500, that number was 6,387 supplications from the German-speaking regions of the time. Up to eighty percent of the requests for pardon originated in the densely populated regions of southern and western Germany; the northern and eastern dioceses seem to have already turned away from the curial well of grace. Beyond the already reported conclusions, one gains a series of general insights into the social and legal history and the *mentalité* of the late Middle Ages from the supplications which have

now been available for research for several decades. In addition, the supplication register of the penitentiary considerably expands the potential for investigation into diocesan jurisdiction.

Prudery and Puritanism?

To the claim that what later came to be characterized as Puritanism ruled the day in the sexual life of medieval men and women and that the relationship between married couples and lovers was dominated by prudery, it must be countered that there is little trace of that in the penitentiary supplications and in the official court records of late medieval marriage processes.¹ Ever since twelfth-century Europeans allegedly re-discovered love (Peter Dinzelbacher) and contemporary theologians had given some room for sexual lust, at least in marriage, some scholars now want to locate “a downright modern understanding of marriage” (Arnold Angenendt) in the late Middle Ages.² The canonical principle that the consent of man and woman constituted a prerequisite for a valid marriage had apparently led to looser sexual practices, at least among men (but evidently not them alone), which showed fully “modern” qualities. From the still-surviving court records of diocesan marriage processes, one gets the impression of frequently uninhibited relations between the sexes, which were evidently practiced even before marriage at all levels of society. Understandably, young women made consent to sexual relations dependent upon at least a pledge of marriage.

Clandestine Marriages—Very Widespread

Clandestine marriage, in which couples lived together “without a marriage certificate,” was very widespread in late medieval Germany, even though, from the time of a decretal of Pope Clement V (1305–14) confirmed by the Council of Vienne, all couples who got married while knowing of a marriage impediment were considered automatically (*ipso facto*) excommunicated (Clem. 4.1.1). A gloss on the *Decretum Gratiani*, which no longer made permission by the fam-

1. Cf. on this point, Angenendt, *Ehe im Mittelalter*.

2. *Ibid.*, 75.

ily to marry a prerequisite for the validity of a marriage, opened the door for the secret contraction of marriages.³ Apparently the official courts in many dioceses (such as Regensburg) turned a blind eye toward couples living together clandestinely. Despite the threat of excommunication, especially when a marriage impediment was present, the inclination to contract a marriage clandestinely appears to have been strong, above all among couples bound by a spiritual kinship. Clandestine marriage was distinguished from *fornicatio* in that, in contrast to occasional, illicit sexual relations, a will to be married was present in both partners. It is thus not correct for the German realm that clandestine marriage was a “legal abstraction” and amounted to merely an informal engagement.⁴ As is clear from this investigation of the penitentiary supplications, many couples lived together clandestinely and had children at the time when they submitted their request for pardon, regardless of an existing marital impediment. As Christina Deutsch has shown was also the case in the matrimonial judgments in Regensburg, the word *clandestine*, did not refer to a violation of a canonical impediment to marriage.⁵ Marriages counted as clandestine when they were established without the banns of marriage and *sollemnisatio*; they were not kept secret from the community of the couple, despite what the term implies in English. The penitentiary treated clandestine relationships as normal marriages and differentiated them from simple fornication (*fornicatio*) as well as from concubinage.

Clandestine Marriage: Not an Instrument for Divorce

It is also not discernible why clandestine marriage would have caused “severe social problems.”⁶ A repeated reproach uttered

3. C.27 q.2 c.2 s.v. *sufficiat*; Dieter Schwab, “Eheschließungsrecht und nichteheliche Lebensgemeinschaft: Eine rechtsgeschichtliche Skizze,” in idem, *Geschichtliches Recht und moderne Zeiten: Ausgewählte rechtshistorische Aufsätze* (Heidelberg, 1995), 205.

4. Beatrice Gottlieb, “The Meaning of Clandestine Marriage,” in *Family and Sexuality in French History*, ed. Robert Wheaton and Tamara K. Hareven (Philadelphia, 1980), 70–72.

5. Deutsch, “Illegale Eheschließung,” 373–83.

6. Angenendt, *Ehe im Mittelalter*, 64.

against medieval marriage law consists in the claim that a married person had the possibility of dissolving an existing, validly contracted marriage by appealing to an earlier, clandestine union.⁷ There are only a scant few cases in the more than 6,387 Roman supplications for marriage dispensations that would even allow a suspicion of such an intention. The jurisdiction of the officialate court, before which the existence of an earlier marriage had to be proven, implemented the instruments available to it from canonical procedural law against such attempts designed to end a marriage. Neither the diocesan official's court nor the tribunal of the papal penitentiary can thus be described as an institution of divorce. The penitentiary supplications do not suggest that the demand for the public contracting of marriages "brought secret marriages almost to extinction."⁸ That may also be incorrect empire-wide for the fifteenth century.

Numerous Second Marriages

Entirely incidentally, demographic findings emerge from our data. The roughly 1,500 supplications from the years 1455 to 1470 requesting dispensation to marry a second time were registered rather unevenly and do not contain many details. From them one gathers that only four percent (fifty-eight) of the men and women submitting a request for pardon were widowed, but in the last quarter of the fifteenth century the number of those who stepped up to the altar (or wanted to do so) a second time increased significantly. This was so even though the church in general opposed second marriages, even if not vociferously. The fourth book of the *Liber Extra* has at its end an entire title "On second marriages." In the first chapter, a decretal of Pope Alexander III decrees that second marriages are not to be celebrated by the parish priest and that the ecclesiastic who acts otherwise may be removed from office and prebend and may be absolved only by the pope.⁹ Only the wise Pope Benedict XII (1335–42)

7. Recently James A. Brundage, "Sex and Canon Law," in *Handbook of Medieval Sexuality*, ed. Vern L. Bullough and James A. Brundage (New York, 1996), 33–50, here 39.

8. Albert, *Der gemeine Mann*, 275.

9. X 4.21.1 rubric: "Secundae nuptiae non benedicuntur et benedicens puniendus est."

ordered a relaxation of this hard rule: an ecclesiastic who had publicly married a couple in a second marriage was indeed suspended, but did not have to turn to the pope for his restoration but could now be absolved by his ordinary instead.¹⁰ The penitentiary register shows several examples in which priests were punished who had solemnized a marriage in which a widower or widow was involved.¹¹

Social necessities, children, the keeping of a house, the demands of court, the operation of a trade, or care for an inheritance frequently made marrying again absolutely necessary for widowers or widows. In addition to that, women not infrequently died in childbirth and perhaps left their husbands with several other children. Who was now to care for them? The number of second or third marriages can be specified in the supplications registered in Rome after 1471, since these texts as a rule give the social status of the petitioner in precise form. It is at that point that they mention an "earlier wife" or a "deceased husband." In the 2,018 German supplications registered during the thirteen-year pontificate of Pope Sixtus IV (1471–84), those married multiple times made up eight percent of the supplicants; to be specific, they name 101 widows and 68 widowers. During the tenure of his successor, Innocent VIII (1484–92), we meet 103 petitioners in the state of widowhood, 60 widowers and 43 widowed women (7.5 percent of the 1,591 supplications). Among the 518 German *petentes* in the Holy Year of 1500, only five widowers and three widows appear.

The Awareness of Canon Law Grew

It is known from research on the situation in Denmark, England, and Iceland that the awareness of canonical marriage law was quite widespread in the late Middle Ages, even among the "simple folk," the "common man," not least because of the numerous relevant judicial procedures. Between 1300 and 1400, roughly 18,000 marriage processes took place before the ecclesiastical courts of the archbish-

10. Ludwig Schmugge, "Kanonistik in der Pönitentiarie," in *Stagnation oder Fortbildung? Aspekte des allgemeinen Kirchenrechts im 14. und 15. Jahrhundert*, ed. Martin Bertram (Bibliothek des DHI in Rom 108; Tübingen, 2005), 97–98.

11. RPG 7.1956 and 2107.

opric of York alone. The laypeople who appeared there knew canonical marriage law full well and knew how to use it to their advantage; indeed they crafted their statements in the way best suited to meet their goals. One may adhere to the following as one of the most important conclusions arising from the German supplications: the knowledge of foundational principles of canonical marriage law also grew in the empire in the fifteenth century. Foundational legal norms, such as “marriages are to be contracted of one’s own free will” (*libera matrimonia esse debeant*, X 4.1.29) or “an *affinitas superueniens* is not a ground for separation” (*non dirimit matrimonium*, X 4.13.2), belonged to the standard formulas in the supplications for marriage dispensation. Even if one objects that the proctors and not the petitioners were responsible for the repeated citations from Gratian and the decretals in the supplications, one can counter that the thousands of *litterae* from the penitentiary, which quoted the legal norms, undoubtedly did spread knowledge of canon law in Germany to all levels of society. In this connection, it is significant that after 1465 the *petentes* no longer made the claim in their supplications that they did not know, for example, that godparenthood created an *impedimentum*. In the fifteenth century, canonical marriage law “penetrated to every corner of Europe.”¹²

The widespread knowledge of ecclesiastical prescriptions with regard to marriage and sexual conduct in the empire of the fifteenth century did not necessarily coincide with a readiness to adhere to these rules in daily life. Regardless of the respective impediment and the knowledge of it, 4,449 of all the couples recorded in the penitentiary supplications had already consummated their marriage (*contraxerunt et consumarunt*), whether clandestinely or publicly, that is, accompanied by the banns and *sollemnisatio*. Only in 510 supplications did the petitioners state that their relationship had not yet come to a *copula carnalis*. In 1,428 supplications, no statement on the matter is made.

12. Frederik Pedersen, “The Legal Sophistication of Litigants in Marriage Cases from Medieval York,” in *Proceedings of the 10th International Congress of Medieval Canon Law* (Syracuse, New York, 13–18 August, 1996), ed. Kenneth Pennington, Stanley Chodorow, and Keith Kendall (Monumenta Iuris Canonici, Series C: Subsidia 11; Vatican City, 2001), 983.

Ecclesiastical Courts Spread the Legal Culture

The recorded court acts did more, however, than encourage just a dissemination of the knowledge of the canonical order of marriage. An entire legal culture came into existence. It is generally acknowledged that “a decisive . . . impulse for the reception of learned law and the reliance on learned jurists derived from the education in canonical procedure on the basis of Roman law procedure and its adoption through ecclesiastical jurisdiction in the figure of the *iudex delegatus* and above all in the establishment of the jurisdiction of the officialate court, in which learned personnel were active in various functions from judges on down to notaries.”¹³ The numerous marriage processes certainly left behind effects in all segments of the population. They put learned processes into gear and spread a legal culture. The people became accustomed to the examination of witnesses and were put under oath at court. The publication of banns of marriage and the demand to give statements to the marriage commissioner resulted in every man and woman knowing only too well the impediments to marriage. Cases in which a marital impediment (above all, consanguinity, kinship by marriage, and spiritual kinship, as well as cases of impotence) was named comprised a quarter of all legal processes in the realm of southern Germany.

On the one hand, ecclesiastical courts were “claimed for conflict resolution” by those seeking their rights.¹⁴ The use of justice, or *Justiznutzung* (Martin Dinges), ensued at all levels of society, from maid-servants to the nobility of the knightly class. Women could (when proof for a contraction of marriage was present) achieve the recognition of an informal marriage or at least sue for financial support. On the other hand, the officialate court increasingly seized the initiative to bring behavior by couples that was contrary to norms before the court and to punish it. Marriage processes, therefore, not only were an “institution of ecclesiastical order”¹⁵ but also served to main-

13. Eberhard Isenmann, “Gelehrte Juristen und das Prozessgeschehen in Deutschland im 15. Jahrhundert,” in *Praxis der Gerichtsbarkeit in europäischen Städten des Spätmittelalters*, ed. F.-J. Arlinghaus, Ingrid Baumgärtner, and Vincenzo Colli (Rechtsprechung, Materien und Studien 23; Frankfurt, 2006), 211.

14. Deutsch, *Ehegerichtsbarkeit*, 7.

15. *Ibid.*, 257.

tain the social order. On this front, it was in no way a mere matter of the carrying out of party interests (Nörr). In the second half of the fifteenth century, men and women in almost every village, parish, and city, above all of the southern and western part of the empire, had experience with ecclesiastical jurisdiction in marriage. The long arm of the episcopal official reached, as we have seen, into the tiniest of parishes, into the most remote valleys. The ecclesiastical arm was only active, however, when legal complaints arose or wayward behavior became known. The supplications of the papal penitentiary also demonstrate that Rome was no secondary theater of action for marriage processes; otherwise 6,387 supplications would not have gone there from the entire empire.

Ecclesiastical and Secular Courts Complemented Each Other in Marital Affairs

On many occasions and for many domains, the opinion that “the ecclesiastical courts were a thorn in the eye of late medieval princes” is well supported.¹⁶ One can perceive, however, that the interests of the holders of secular as of spiritual power converged in marriage courts, although the final decision in marital matters without a doubt was the domain of the church. The lords of the land and the cities as well as spiritual lords placed heightened value on propriety and morality. Significantly, to underscore this tendency with an example, the city council of the imperial city of Frankfurt am Main in 1452 issued a law which subjected not only usury and sexual procurement but also adultery to punishment.¹⁷ At least for Constance it must be stressed, against the older research, that the relationship between municipal courts and episcopal officialate courts was “predominantly marked by cooperation.”¹⁸

Results of more recent research confirm the observations made in

16. Enno Bünz, “Das landesherrliche Kirchenregiment in Sachsen vor der Reformation,” in *Glaube und Macht*, ed. Enno Bünz (Leipzig, 2005), 100.

17. Armin Wolf, *Die Gesetze der Stadt Frankfurt am Main im Mittelalter* (1969), 344.

18. Thomas Wetzstein, “*Tam inter clericos quam laicos?* Die Kompetenz des Konstanzener geistlichen Gerichts im Spiegel der archivalischen Überlieferung,” in *Praxis der Gerichtsbarkeit*, ed. Arlinghaus, 70 n. 82.

the examination of the penitentiary supplications. Peter Blickle has described the dogged, persistent, and ultimately successful attempt to "communalize" the church as one of the most powerfully effective efforts common to many cities and village parishes in the German empire of the late Middle Ages. For this reason, as can also be gathered in Roman source material, the secular authorities were no less eager than the church to make an impact on the arena of morals and marriage, even though they did not dispute that the primary legal responsibility in such matters belonged to the ecclesiastical officialate courts. Such involvement by the secular authorities did not happen only once the Reformation gained ground in Germany. Adultery, *fornicatio*, and the seduction and desertion of virgins not only impaired the well-being of the soul; they also disturbed the communal life of towns and cities. Municipal courts punished adulterers and "Don Juans" but also women who falsely sued a man on account of a marriage pledge. While the episcopal courts were first in line as those "responsible for marriage matters," as has most recently been determined for the bishoprics of Basel, Chur, and Constance, secular courts were not inferior to the ecclesiastical ones in their efforts to ensure morality and decency.¹⁹ From the fifteenth century, not in order somehow to supplant ecclesiastical courts but rather with a view to public order, "the imperial cities as well as country towns and villages . . . began to subject sexual offenses to punishment."²⁰ Examples of this are known from Ulm, Basel, and Zurich, but also from small communities like Rheinfelden or Altstetten. Delinquent behavior such as adultery, marital abuse, or rape was pursued and punished by secular courts with as much energy as by officialate courts. Research into the southwestern German realm has shown that violations of morality and canonical marital impediments "were by far the most frequent offenses." In Chur, for instance, around 1500, offenses against the sexual moral code made up sixty percent of all cases, not only in the lay world but also among clerics who fell under punishment.²¹

19. Albert, *Der gemeine Mann*, 121ff. and 191 with the older literature.

20. *Ibid.*, 127.

21. *Ibid.*, 205 and 214.

Another thesis posits that women who, in order to receive a *Kranz-geld*, had brought a suit before the officialate court because of the breaking of a marriage pledge were discriminated against by the canonical legal system.²² The analysis of the penitentiary supplications have nevertheless shown that women were not the only ones who were disadvantaged. The problem consisted much more in the fact that, in suits for the assigning of a spouse, a marriage pledge had to be proven before the court. This proved equally difficult for men and for women. According to the results of more recent research, it is above all women of the lower classes, daughters of peasants and maidservants, who turned to the marriage courts in southern Germany at the very least in order to obtain a material compensation for the shame brought upon them. People from rural areas were also the primary ones who sued before the official in the diocese of Constance.²³ In contrast, in ten years (1463–69 and 1521–24), among a total of more than a thousand marriage processes, only thirty-two and nineteen suits came before the ecclesiastical court from the two great cities of Basel and Colmar, respectively. Did city-dwellers, in contrast to country folk, turn overwhelmingly to secular courts?

Church Law Changed Sexual Conduct

The medieval church had stubbornly and in the end successfully implemented the freedom of marriage, “the power to choose” (John Noonan), against the interests of family, kin, clan, dynasty, or secular power. It thereby achieved an important, emancipating success. The problem for the church consisted, however, in “finding and implementing a binding form and unambiguous documentation for the bridal couple’s declaration of consent that established a marriage.”²⁴ The church’s understanding that made consent of both partners the prerequisite for a marriage, even a clandestine one, seems to have influenced sexual behavior, especially of young men. They knew full well that not every instance of sleeping with a woman had to

22. Claim made by Burghartz, quoted by Albert, *Der gemeine Mann*, 248 and 271.

23. *Ibid.*, 248–70.

24. Janssen, *Das Erzbistum Köln*, 2.2.168.

lead to marriage if they denied any intent of marrying. A pledge of marriage given in intimacy could hardly be proven by women and young maidens at court if the seducer later denied any intention to marry. Thousands had to be disappointed when they found that out; the penitentiary supplications also give witness to that. Because canonical procedural law demanded the proof of witnesses in a matter of dispute, in this case it clearly favored (unintentionally?) the man.

The result was that suits for confirming the existence of marriages dominated cases handled before officialate courts, and not just in the German empire. The assessments of the registers of English and French officialate courts over the entire late Middle Ages shows that eighty percent of suits sought the affirmation of a marriage, twenty percent separation. Not quite as high a ratio is calculated for the German realm. In the marriage cases handled before the ecclesiastical courts in Basel, Chur, and Constance, the suits to have a marriage affirmed make up about 60 to 65 percent; the ratio lies somewhat lower, 60 to 40, in Regensburg.²⁵

The Official—the Final Court of Appeal for Seduced Women

Although the great majority of the suits for the assigning of a marriage were brought by women and ended in the man's favor, the seduced girls and women at least got their due in a material sense. The claim for financial support was in many cases the main reason for the appeal to the ecclesiastical court. The officialate court served as the final stop for seduced and abandoned women. If a man denied any intent to marry, the only choice remaining for the seduced was to walk before the ecclesiastical court. They only rarely got a husband assigned to them there by the ecclesiastical judges, because of the difficulty of proving a marriage pledge, but they at least received compensation suitable for their station. The amount of this *Kranzgeld* seems at least to have doubled from the middle of the fifteenth century to the year 1500.

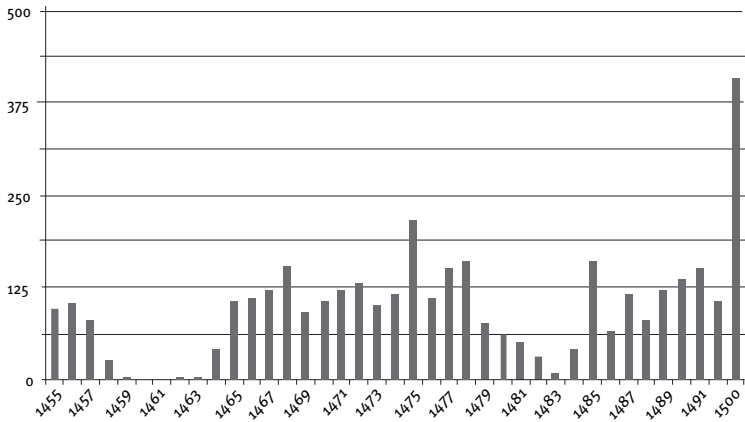
25. For the documentation, cf. Deutsch, *Ehegerichtsbarkeit*, 314.

Rome—"Gentler" than the Episcopal Officialate Court

If one compares the matrimonial dispensations of the papal penitentiary with the decisions of the diocesan officialate courts, one comes to a further, interesting conclusion. The authors of the late medieval reform writings and *gravamina* were not wrong; one of their frequently raised complaints was in essence true: ecclesiastical courts did separate (too) many marriages and couples in which at least one side wanted to be married. Nevertheless, by using the clause *tolleramus* the officialate courts also did not endeavor to overthrow existing relationships under any circumstances whatsoever. The Roman curia, in contrast, regularly lifted judgments of annulment, which an official or vicar general had made *in partibus* because of a violation of prescriptions of the Fourth Lateran Council, in favor of the supplicating couples. As an argument for their request, the petitioners stated that it would unleash "considerable scandals" (*graviora scandala*) if they were separated. In many cases the couple ordered to separate by the episcopal official refused to obey the judgment. The papal curia thus valued the continuation of a marriage more highly than the strict adherence to canon law found in the officialate courts. For a fee, it ensured that social relationships were not disturbed in city and country.

There was nothing else for the officialate courts *in partibus* to do than to let the law take its course. It did not quite stand in their competence to dispense or absolve from evident marital impediments. The ecclesiastical judges thus apparently pursued a stricter policy toward marriages that were not canonically unobjectionable than the penitential court of the Roman curia. Unfortunately, one cannot determine how the diocesan courts came to their knowledge about marriages that did not conform to the rules. Documents often simply say, "When the impediment came to the knowledge of the ordinary,"²⁶ without any more specific statement by which the information could be retrieved. Had someone, probably their neighbors or parish priests, denounced the couples? Had the social pressure

26. RPG 5.334 (Conradus Wisz): "Cum (impedimentum) ad notitiam ordinarii devenisset."



Graph 15. Dispensations for the Continuation of Marriages Despite an Impediment

against couples living together uncanonically in general increased in the course of the fifteenth century? Separation was always issued, in various formulations, as the conclusion of the process at the official-ate court.²⁷ In several cases, the official referred the married couple directly to the next court of instance or to the Roman curia; he thus provided them, as it were, with legal advice. One supplication thus reads that the ordinary forbade the couple under penalty of excommunication to have marital relations with each other until they had received dispensation from the apostolic see.²⁸

In no fewer than 3,708 supplications—thus in almost sixty percent of all cases investigated—the couple explicitly expressed their wish to continue, thanks to the papal pardon, in their marriage despite a canonical shortcoming. Probably the number was even higher, because the relevant details were not registered during Pius II's

27. Cf. RPG 5.383: "per ordinarium divortiat fuerunt"; 5.444: "per iudicem spirituale separati fuerunt"; 5.547: "ordinarius eos sententialiter divortiavit"; 5.552: "ordinarius eosdem per sententiam definitivam divortiavit."

28. RPG 5.924: "ordinarius sub excommunicationis sententia eis cohabitare inhiuit quousque a sancta sede apostolica fuissent dispensati."

reign (1458–64). The curve over the years of these requests is shown in Graph 15.

One reason for the increase of these requests for pardon certainly lies in the efforts of couples to safeguard the security of their succession and not to tear apart the marriage's common assets. The high number of requests for the legitimization of children (4,906 of the 6,387 supplications) points in the same direction.

Marriages Were Contracted “in Heaven” or before the Notary

Marriages in developed regions of Europe penetrated by the *ius commune* were as a rule contracted before a notary in the late Middle Ages, and this was true in every case in which it was a matter of unions in which the families exchanged large fortunes. As a result, notaries' registers and records offer a still largely unearthed treasure for medieval marriage processes.²⁹ What enormous research potential rests in the evaluation of notarial records will be shown with only one example from “German Romans.” The marriage contracts of members of the baker's guild from the German colony in the papal city were in large part recorded before the German-speaking notary Johannes Michaelis with the explicit naming of the witnesses present.³⁰ Some women married three or even more times because their husbands predeceased them. The notary took down the *verba de praesenti* word for word in the record. They corresponded to the formula also common in German lands: “Johannes, do you want to take Barbara as your legitimate wife?” to which he answered, “I want this.” The notary confirmed the marriage pledge, “What God has bound together no man should separate.” Afterwards the bridal pair exchanged rings. The ceremony did take place “according to the rules of

29. On this point, cf. Meyer, “Wie heiratet man richtig?”

30. On this notary, cf. Arnold Esch, “Un notaio tedesco e la sua clientela nella Roma del Rinascimento,” *Archivio della Società romana di storia patria* 124 (2001), 175–209. Relevant notarial records of marriage contracts may be found in Schulz and Schuchard, *Handwerker deutscher Herkunft*, CU Nr. 10, 25, NU Nr. 19, 40, 45, 49, 75, and 89; see also pp. 151ff. and 174.

the Catholic faith" (*secundum fidem catholicam*), but only rarely is mention made of the presence of a priest.³¹

In contrast to the countries of the *ius commune*, in the German empire and especially in the country, marriage agreements in the fifteenth century only rarely took place before a notary and still more rarely before a priest or in a church. In the villages, one was scarcely aware of the contractual marriage agreements widespread among city-dwellers. The youth who wanted to marry encountered one another at village and hunting festivals and fell in love with each other there. Lay marriages were the order of the day; the decisive *verba de praesenti* were known to everyone, even in the country. Marriage courts in many dioceses, not only in the bishoprics of Basel, Chur, and Constance, were largely called upon by simple folk from the villages and hardly at all from the imperial cities. In the big picture, canonical marriage law provided an effective possibility for emancipation.³²

Rise of Social Discipline

Numerous details resulting from the supplications permit the conclusion that, in the second half of the fifteenth century in the German empire, canonical marriage law and its implementation via the officialate court as well as the papal penitentiary opened the way to an intensification of social discipline. This development had apparently advanced further in the southern and western realms of the empire than in other dioceses of the north and east. The carrying out of the banns of marriage in front of the parish congregation supported this tendency for increasing control in rural areas. In cases of severe marital error, such as adultery or incest with a close relative, the episcopal officialate court proceeded hand-in-hand with the secular courts *ex officio* against the sinners. They judicially prohibited the guilty party from demanding marital relations. This is a further indication of how the church increasingly interfered in the entirely pri-

31. Cf. Schulz and Schuchard, *Handwerker deutscher Herkunft*, NU Nr. 40 from July 15, 1467; a priest poses the questions to a couple in Nr. 49.

32. Walter Prevenier, "Ehe C," in *Lexikon des Mittelalters* 3 (1986), 1636.

vate realm of married life and how “the church courts exercised an extremely important function of keeping order in the late medieval community.”³³

When Martin Luther denied the church the jurisdictional authority for marriage, nothing much changed, at least in the short run. Even after marriage mutated into a worldly thing and all “papal” tradition had been laid aside, the Reformation proved to be not less intent on regulating the propriety and morals of the faithful than the Roman church of the late fifteenth century.

33. Albert, *Der gemeine Mann*, 276.

Appendix: Fees and Composition Payments for Marriage Dispensations

Table A1. Fees for Marriage Dispensations, c. 1450–1513

Abbreviations

scr = scribe's fee
proc = proctor's fee
sig = seal-maker's fee

Exchange Rates

1 camera florin = 10 *grossi Turonenses* (gr)
1 camera florin = 50 *solidi* of 12 *denarii* ea.
1 ducat (d) = 1 camera florin

1 ducat = 72 *boleni*
7 *boleni* = 1 *grossus*
1 *carlenus* (c)

Lists of <i>Taxae</i>	A-B (before 1455)	Clm 16226 (1455/58)	Vat. lat. 6290 (1464)	Clm 422 (before 1513)
Currency	<i>grossi</i>	<i>grossi</i>	<i>grossi/ducats</i>	<i>grossi/carleni</i>
3 ^{ia} et 4 ^{ia} consang. vel affin. volentes	26	26	27.5 gr	2 d 4 c
3 ^{ia} et 4 ^{ia} ignoranter contractum	26	scr 19, sig 9	18 gr, scr 9.5 gr	2 d 4 c
3 ^{ia} consang. vel affin. volentes ignor. contr.				3 d 1 c
3 ^{ia} ignor. et expresso		31.5	3 d = 35 gr	
3 ^{ia} scientes contr. et consum.				4 d = 40 gr
4 ^{ia} consang. ignor. et consum.	16		14.5	2 d = 20 gr
2 ^{da} et 3 ^{ia} (only expresso, nobility)				4–7 d
4 ^{ia} consang. vel affin. volentes		16 (scr 7, sig 5, proc 4)	16.5 (scr 7.5, sig 5.5, proc 3.5)	2 d =20 gr
4 ^{ia} contrax. scienter et consum. vel non	18	20 (scr 10, sig 7, proc 3)	20.5 (scr 9.5, sig 7.5, proc 3.5)	3 d 2 c
incestus in 2 ^{da} affin.			6.5	2–9 d
incestus in 2 ^{da} affin. gravid.			10	
litt. decl. in 3 ^{ia} et 4 ^{ia}		18	7.5	2 d = 20 gr
absolutio a fornicatione		5 (scr 3, proc 2)	10.5	

Table A1. (*Cont.*)

Lists of <i>Taxae</i>	A-B (before 1455)	Clm 16226 (1455/58)	Vat. lat. 6290 (1464)	Clm 422 (before 1513)
Currency	<i>grossi</i>	<i>grossi</i>	<i>grossi/ducats</i>	<i>grossi/carleni</i>
absolutio a clandest.			18.5	plus 4 c
contraxit post votum		6		2 d 3 c
contraxit per vim et metum				2 d = 20 gr
impotentia/frigiditas				2 d = 20 gr
publica honestas	16			2 d 8 c
cognatio spir. ignoranter				3 d 8 c
cognatio spir. scienter				5 d 4 c

Table A2. Costs for Compositions under Pope Paul II (1464–71)

Paid in camera florins.

RG	RPG	Amount	Impediment	Time Period	Payer
653	377	4	4 ^{ia} consang.	5 weeks	Joh. Lous
3987	185	3	3 ^{ia} consang.	28 weeks	Joh. Cavalieri
2109	186	2	3 ^{ia} affin.	28 weeks	Joh. Cavalieri
3977	209	4	3 ^{ia} affin.	2 weeks	
6281	222	8	3 ^{ia} affin.	16 weeks	
5658	260	6	3 ^{ia} consang.	2 weeks	
1	261	3	3 ^{ia} affin.	2 weeks	
3802	340	10	3 ^{ia} affin.	2 weeks	Henr. Libenter RG 9.2006
3956	356	14	3 ^{ia} affin.	24 weeks	Joh. Haltefast RG 9.3167
2719	367	12	3 ^{ia} affin.	3 weeks	Jacob Scäh
778	415	4	4 ^{ia} consang.	1 week	Christianus credentarius pape
108	759	10	4 ^{ia} consang.	6 weeks	Alex. Misterlin RG 9.128
741	545	5	4 ^{ia} affin.	1 week	Stefan Nunkilch RG 9.5653
928	620	6	4 ^{ia} affin.	1 week	Joh. Weithas, procurator
4598	646	4	4 ^{ia} affin.	1 week	Stefan Nunkilch RG 9.5653
6177	724	10	4 ^{ia} consang.	4 weeks	Adam Piscatoris, procurator
2429	740	6	4 ^{ia} affin.	3 weeks	Adam Piscatoris, procurator
2374	811	6	4 ^{ia} affin.	0 weeks	A. Hee, script. ap. RG 9.42

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